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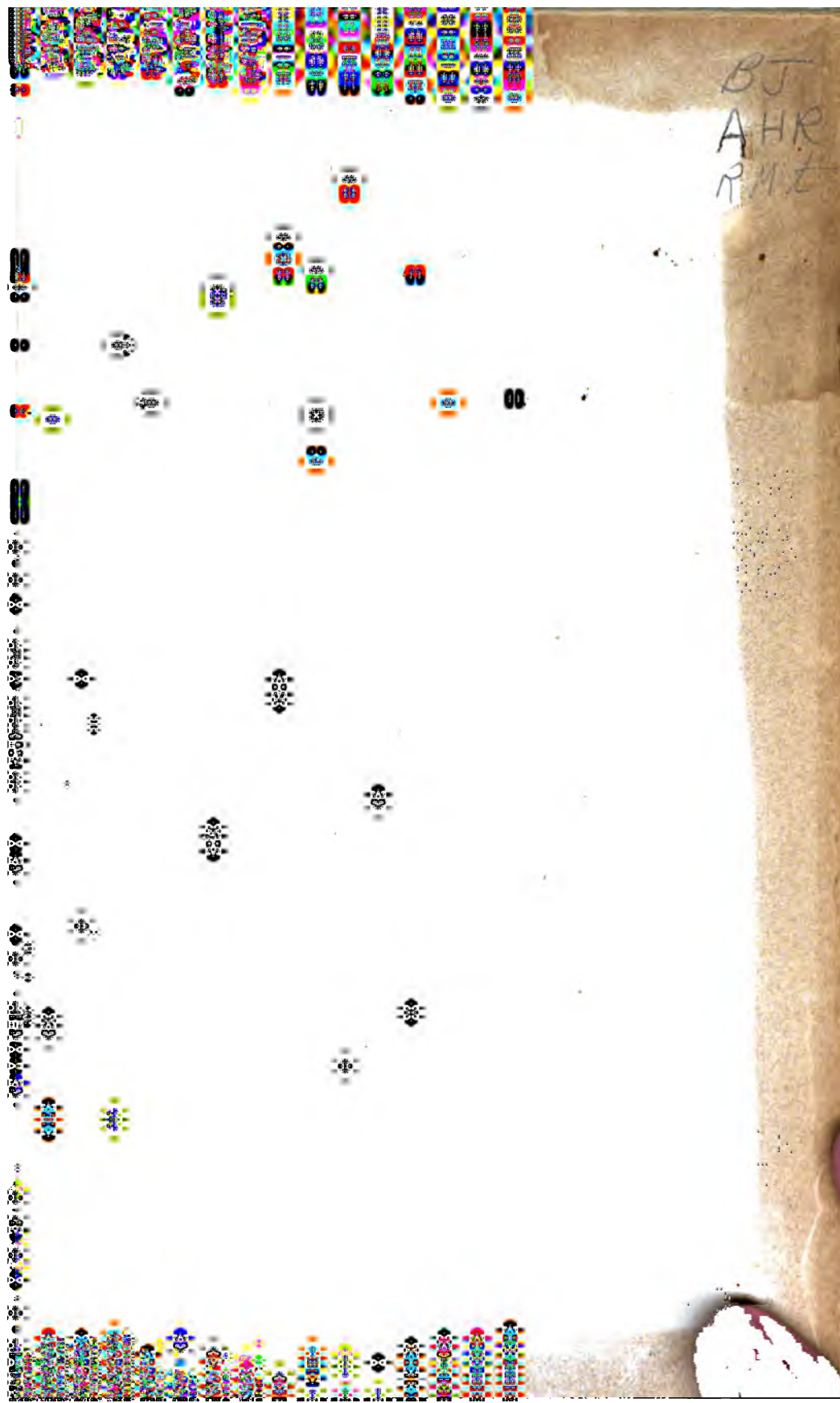
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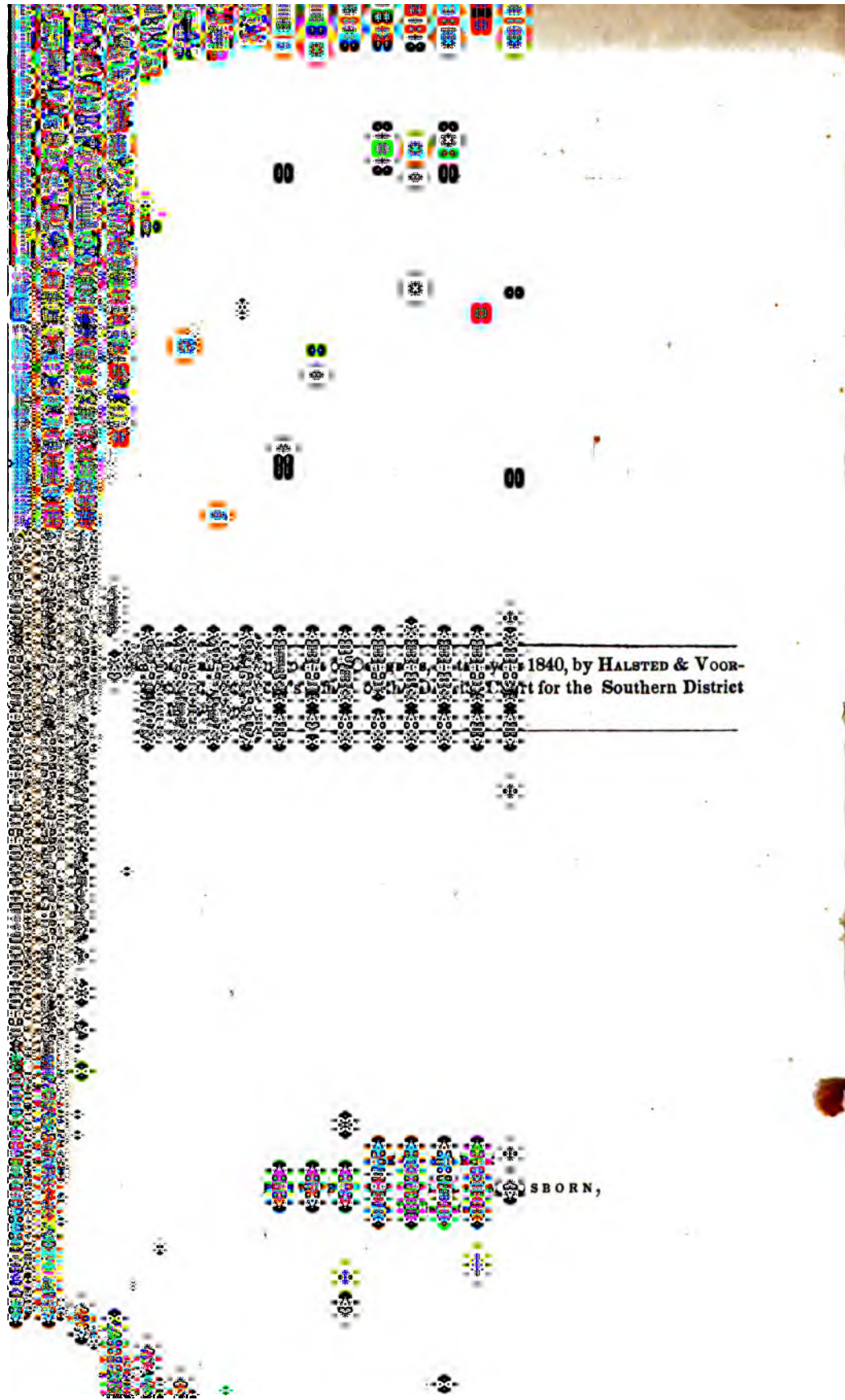
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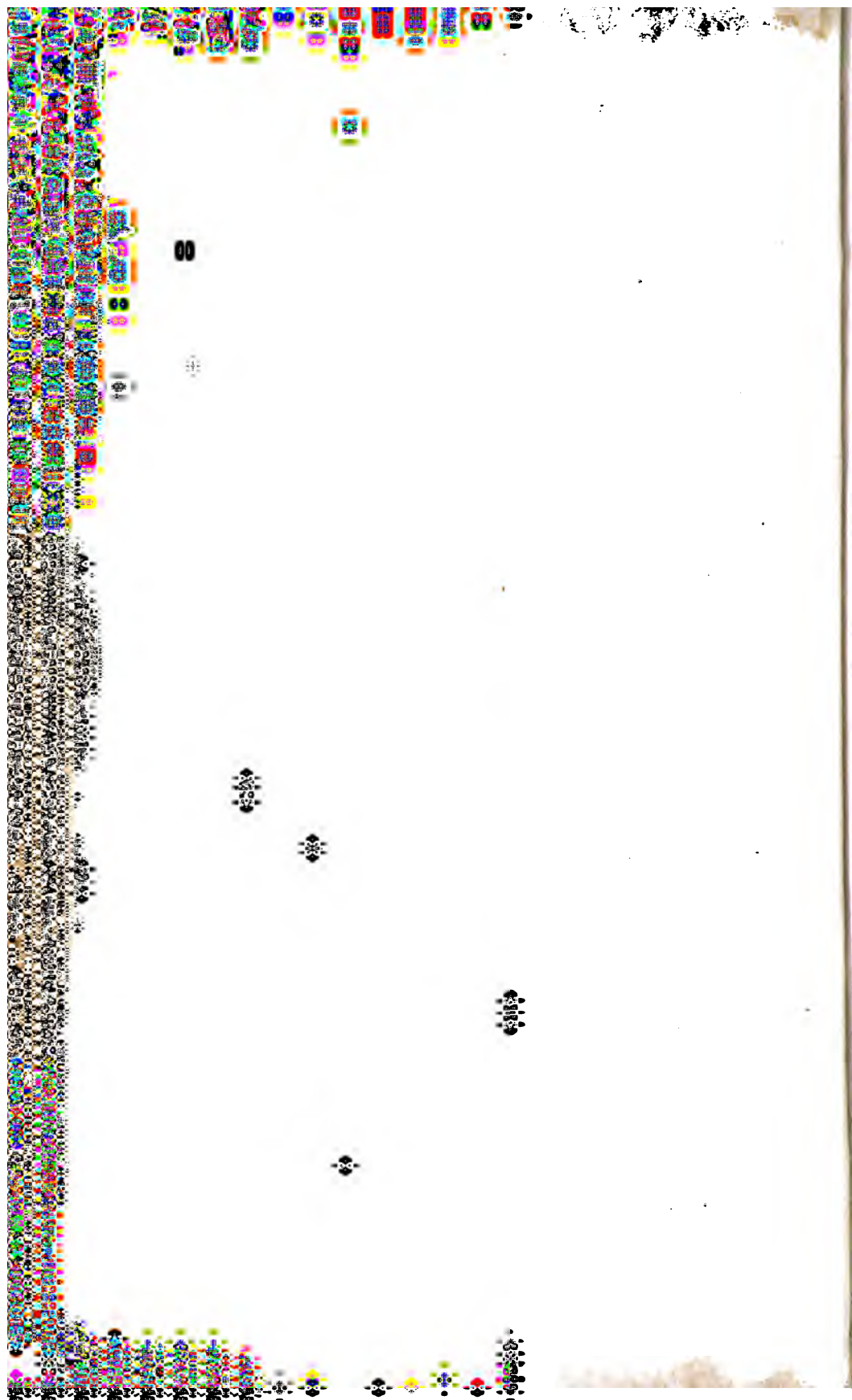
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1840, by HALSTED & VOR-
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as this day commenced his
 as solicitor of this court.
 1880.
 as solicitor of this court.
 produced by A. B., that he
 years, since he attained the age
 of the court, allowing to him
 of clerkship.
 1, 1830.
 W. T. M'COUN, V. C.

as solicitor of W. T. M'C., one of the
 G. R. of counsel, it is ordered,
 studies be allowed to the above
 of clerkship.

(2) Circuit.(2)
 of New-York—
 our orator and oratrix, I. K., of
 is wife,(5) that I. T., junior,
 of the Address.
 The stating part or premises.

late of the same city and state, merchant, deceased, who was the father of your oratrix, M. E. K., being in his lifetime seized and possessed of a large real and personal estate, and being of sound and disposing mind and memory, did
2 on the 4th day of November, in the year of our Lord 1799, make and publish his last will and testament, and caused the same to be attested in due form of law, to pass thereby real estate. And your orator and oratrix further show, that the said I. T., junior, did, in and by his said last will and testament give, devise, and bequeath unto his wife Christine, to his son Archibald, and to your oratrix, his daughter Maria, and to their heirs and assigns forever, all his real and personal estate, of every nature and kind, to be equally divided among
3 them, share and share alike, when his said son should attain the age of twenty-one years. And he, the said I. T., junior, thereby nominated and appointed his said wife to be executrix, and his friends I. D. and I. T. to be executors of that his last will and testament, they both being then of the city of New-York, merchants; and he thereby revoked all former and other wills by him theretofore made, declaring that to be his last will and testament. In witness whereof, he, the said I. T., did thereunto set his hand and seal the said 4th day
4 of November, in the year of our Lord 1799; as by the said last will and testament in the possession of your orator and oratrix will more fully appear, and to which for greater certainty they pray leave to refer. And your orator and oratrix further show, that the said I. T., junior, departed this life in or about the year 1801, without having revoked or altered his said last will and testament, leaving his said wife and his said children, to wit, Archibald T. and your oratrix, Maria E. K., his only children and heirs at law him surviving, which said children were both minors under the age of twenty-one years. Your orator and oratrix further show unto your honour, that the said I. D. and I. T., the executors named in the said will, caused the same to be
5 duly proved, took out letters testamentary thereupon, and assumed upon themselves the execution thereof. And your orator and oratrix further show unto your honour, that the said I. D. and John T. took possession, in virtue of their said character of executors, of all the personal estate and effects of the said I. T., junior, deceased, amounting to forty thousand dollars, or some other large sum of money. Your orator and oratrix further show, that the said C., the widow of the said I. T., deceased, departed this life a few weeks after the
6 decease of her said husband, in or about the year one thousand eight hundred and one, intestate, and leaving the said Archibald T. and your oratrix, Maria E., her only children and heirs at law. Your orator and oratrix further show unto your honour, that the said Archibald T. arrived at the age of twenty-one years some time in the year of our Lord one thousand eight hundred and three, your oratrix, Maria E., being then an infant of about six years of age. That by an order of the surrogate of the city and county of New-York, the said I. D., John
7 T. and Archibald T. were, on or about the fifth day of June, in the year one thousand eight hundred and six, appointed the guardians of your oratrix, Maria E. K., then Maria E. T., as by the letters of guardianship in the possession of your orator and oratrix, and ready to be produced before this honourable court, or by the record of the said appointment in the office of the surrogate of the city and county of New-York, will more fully appear, and to which your orator and oratrix pray leave to refer. And your orator and oratrix further show unto

your honour, that on receiving their said appointment, the said Archibald T., I. D., I. T. and John T., of the city of New-York, merchants, as their surety, entered into a bond to your oratrix in the words or to the effect following, that is to say: "Know all men by these presents, that we," [*guardianship bond set forth verbatim;*] as by the said bond now on file in the office of the said surrogate of the city and county of New-York will more fully appear, and to which your orator and oratrix pray leave to refer. Your orator and oratrix further show unto your honour, that about a year after the execution of the said bond, and the appointment of the said Archibald T., I. D. and I. T., to be the guardians of your oratrix as aforesaid, the said I. D. and I. T. made a division of the personal estate of the said I. T., junior, deceased, and of the said Christine T., without having kept any separate accounts of the two estates, between the said Archibald T. and your oratrix, then Maria E. T.; and on or about the seventeenth day of August, in the year of our Lord one thousand eight hundred and seven, transferred and delivered in bonds and mortgages and money to the said Archibald T., including certain advances made to him, and moneys paid for him prior to that period, property to the amount of sixteen thousand one hundred and seventy-two dollars and eighty-five cents, and they at the same time transferred and delivered to the said Archibald T., as one of the guardians of your oratrix, in bonds and mortgages, navy certificates and cash, the like sum of sixteen thousand one hundred and seventy-two dollars and eighty-five cents, excepting certain moneys stated to have been paid, and which your orator and oratrix believe were paid for, and on account of your oratrix, amounting to the sum of fourteen hundred and five dollars and fifty-four cents, leaving a clear balance of principal, which, with arrears of interest, amounted to the sum of fifteen thousand four hundred and sixty-eight dollars and ninety-four cents, on the said seventeenth day of August, in the year eighteen hundred and seven. That the said I. D. and I. T. at the same time delivered to the said Archibald T. a book of account, exhibiting the property of the said John T., junior, deceased, and the respective shares thereof of the said Archibald T. and your oratrix to be as herein stated. Your orator and oratrix further show unto your honour, that besides the personal estate above mentioned, whereof the said I. T., junior, died possessed, as aforesaid, he was also seized and possessed of valuable real and leasehold estates in the city of New-York, and which passed by the said will; the rents, issues and profits of which, from the first day of May, in the year of our Lord one thousand eight hundred and six, to the first day of November, in the year one thousand eight hundred and seventeen, were received quarterly by the said A. T., and that the same during the said period amounted to the sum of twenty-one thousand seven hundred dollars, all which came to the hands of the said A. T. And your orator and oratrix further show, that your oratrix was entitled to a moiety of the rents, issues and profits so as aforesaid received by the said Archibald T., and that your orator and oratrix are entitled to demand and receive the said money, together with interest from the times when the said rents, issues and profits were received by the said Archibald T. as aforesaid. Your orator and oratrix further show unto your honour, that the said I. D. departed this life intestate in or about the month of June, in the year of our Lord one thousand eight hundred and nine, leaving three children him surviving, that is

to say, James D., William D. and Jane D., his only children and heirs at law, and that he was seized and possessed, at the time of his death, of a very large real and personal estate, amounting, as your orator and oratrix believe and charge, to the sum of one hundred thousand dollars and upwards, and that his
 15 widow R. D., and I. M., junior, of the city of New-York, merchant, took out letters of administration upon his estate. That the said James D., one of the sons of the said I. D., deceased, has lately died intestate, and as your orator and oratrix are informed and believe, no person has administered upon his estate. And your orator and oratrix further show and charge, that all the personal estate of the said I. D. the elder, deceased, amounting to fifty thousand dollars and upwards, after payment of all debts due from the said I. D., came to the
 16 hands and possession of the said R. D. and I. M., junior, or one of them, to be administered by them, and that in addition thereto, the said I. D. died seized of, or entitled to, real estate within this state which descended to his said three children, I. D., junior, deceased, W. D. and Jane D., to the amount of fifty thousand dollars and upwards.

Amend-
ment A.
annexed.

And your orator and oratrix further show unto your honour, that your oratrix became of age on the fifth day of November, in the year of our Lord one thousand eight hundred and seventeen. That in the month of June, in the year one thousand eight hundred and eighteen, the said I. T. delivered to your oratrix a bundle purporting to contain the accounts of his guardianship, and certain deeds and papers and securities for money, and at the same time presented to your oratrix a paper, which he stated to be a release to him individually, and requested your oratrix to execute the same, alleging that he had faithfully performed his trust, and that he was entitled to a discharge accordingly. That your oratrix having the fullest confidence in the said I. T., and being well assured that he would not ask her to sign a paper that she ought not to sign, readily
 17 and without examining or even opening the bundle, executed a paper, purporting to be a release to the said I. T., but to which your orator and oratrix pray leave to refer for greater certainty, when the same shall be produced and proved before this honourable court. And your orator and oratrix further show unto your honour, that when the said paper was so handed to your oratrix by the said I. T. for her signature, she was without counsel, or any friend to whom she could resort for advice, and that she was induced to execute the same from her
 18 entire confidence, that her said guardian would not require her to do an act which was not in itself strictly right and proper to be done.

Your orator and oratrix further show unto your honour, that some time after the said bundle was delivered to your oratrix as aforesaid, when she came to examine the contents thereof, she found it contained a deed from her brother Archibald T. for a moiety of a house in Pearl-street, valued at ten thousand dollars, and for four equal undivided fifteenth parts of a house in William-street,
 19 valued at one thousand eight hundred and sixty-six dollars and sixty-four cents, a conveyance for a house situated in the village of Newark, in the state of

Amendment A, on page 15 of the bill, between lines 5 and 6. "And your orator and oratrix further show, that the said Jane is married to, and is now the wife of James Neilson." (Annexed to the Bill.)

New-Jersey valued at five thousand dollars; a bond and mortgage from one G. M'K., the interest of which was paid up to the second day of May, one thousand eight hundred and seventeen, for two thousand dollars; J. W. B.'s bond and mortgage, the interest of which was paid up to the 28th day of December, one thousand eight hundred and seventeen, for one thousand dollars; J. R.'s bond and mortgage, the interest paid up to the twenty-fifth day of February, one thousand eight hundred and eighteen, for five hundred dollars; A. Y.'s bond and mortgage for four hundred dollars; and twenty-two shares in the Mutual Insurance Company for eleven hundred dollars; amounting in the whole, with interest, on the twenty-fifth day of November, one thousand eight hundred and seventeen, the day your oratrix arrived to the age of twenty-one years, to twenty-one thousand nine hundred and thirty dollars and eighty-nine cents. That the said bundle contained a variety of loose receipts and memorandums carelessly thrown together, but no account whatever of the guardianship, nor any materials out of which one could have been formed, from the said seventeenth day of August, one thousand eight hundred and seven, to the time of the delivery of the said papers to your oratrix by the said I. T. Your orator and oratrix further show unto your honour, that your orator and oratrix intermarried on the ninth day of December, one thousand eight hundred and eighteen. Your orator and oratrix further show that L. M. T., the wife of the said Archibald T., refusing to relinquish her right of dower in the premises so as aforesaid conveyed by the said Archibald T. to your oratrix, your orator and oratrix were obliged to give her an equivalent therefor, and for that purpose your orator and oratrix, on the twenty-fourth day of March, in the year one thousand eight hundred and nineteen, conveyed and assured to the said Louisa M. T. the above mentioned house situated in Newark in the state of New-Jersey, which had been so as aforesaid conveyed to your oratrix by the said Archibald T., to be had and holden to the said L. M. T., for and during the term of her natural life, as by the deed thereof from your orator and oratrix to the said Louisa M. T. will more fully appear, and to which your orator and oratrix beg leave to refer. And your orator and oratrix further show and charge, that the said house in Newark, which, in the estimate of the property so as aforesaid delivered to your oratrix by the said I. T., was appraised at the sum of five thousand dollars, is not in fact worth, subject to the life estate of the said Louisa M. T., more than one thousand dollars at the utmost. And your orator and oratrix further show, that your oratrix has never received any other property whatsoever from her said guardians, excepting three promissory notes made by one S. B., amounting to the sum of four thousand dollars, which were delivered to your oratrix by the said I. T. a short time previous to the delivery of the said bundle by him to your oratrix, of which said notes the sum of one thousand seven hundred and nine dollars and seventy-nine cents have been paid, and no more; and which, after deducting the interest from the twenty-fifth of November eighteen hundred and seventeen as aforesaid, to the time the money was paid, amounted to one thousand five hundred and sixty-six dollars and sixty-one cents, and no more; and the said S. B. has since proved to be utterly insolvent, and there is not the least prospect of ever receiving from him the balance due upon the said notes. And excepting also such small sums as have been advanced from time to time for the maintenance and education of

- 27 your oratrix; and which your orator and oratrix believe and charge, did not, upon an average, from the year one thousand eight hundred and seven to the year one thousand eight hundred and seventeen, exceed, at a liberal estimate, six hundred dollars a year. And your orator and oratrix further show unto your honour, that the whole amount of the property, real and personal, which has been forthcoming to your oratrix from her said gaurdians, even according to the estimate thereof made by the said Archibald T. and I. T., or one of them, does not, after deducting the interest granted to the said Louisa M. T. for her
- 28 right of dower, exceed the sum of nineteen thousand four hundred and ninety-seven dollars and forty cents: whereas the personal estate alone of your oratrix, with merely simple interest, to the said twenty-fifth day of November, one thousand eight hundred and seventeen, amounts to twenty-six thousand five hundred and ninety-three dollars and eighty-seven cents; and the rents, issues, and profits of her real estate, without interest, on the first day of November, amounted to ten thousand eight hundred and fifty dollars, and sixty-three cents.
- 29 And your orator and oratrix further show unto your honour, that they have repeatedly called upon and requested the said Archibald T. and I. T. to render an account of their guardianship, and to pay to your orator and oratrix what upon such accounting may appear to be justly due to them. And your orator and oratrix well hoped that the said Archibald T. and I. T. would have complied with such your orator's and oratrix's reasonable request.(1) But now so it is, may it please your honour, that the said Archibald T. and I. T., combining and confederating with the said John T., I. M., junior, R. D., W. D., and *James Neilson and Jane his wife*, with divers other persons at present unknown to your orator and oratrix, whose names, when discovered, your orator and oratrix pray may be inserted in this their bill of complaint, with apt words to charge them as parties thereto, to injure and aggrieve your orator and oratrix in the premises, wholly refuse or decline to render any account to your orator and oratrix of the said guardianship, or to pay to your orator and oratrix the sum which is manifestly due upon the statement in this your orator's and oratrix's bill set
- 30 forth;(2) and for justification thereof sometimes the said confederates pretend that they or some of them have already rendered an account of the said guardianship, and paid to your oratrix all that she was entitled to receive; whereas your orator and oratrix charge, that such allegation is wholly unfounded and untrue, and that there is now justly due to your orator and oratrix, after deducting a liberal allowance for the maintenance and education of your oratrix, considerably more than the sum of ten thousand dollars, and that without calculating the arrears of interest since the said twenty-fifth of November, eighteen
- 31 hundred and seventeen. And at other times the said A. T., I. T., R. D., I. M., junior, W. D., *James Neilson and Jane his wife*, and J. T., pretend that the paper purporting to be a release to the said I. T., so as aforesaid signed by your oratrix, not only released and discharged the said I. T. from all accountability, both as the guardian of your oratrix and as obligor in the said bond,
- 32

(1) Confederating part.

(2) Charging part. The words in italics were amendments made by interlineations in red ink. The words "and J. D." were struck through with a pen.

but that the same operated also to release and discharge the said R. D., I. M., junior, W. D., and James Neilson and Jane his wife, as administrators and heirs at law of the said I. D., one of the said guardians and obligors in the said bond, and the said John T., from all responsibility to your orator and oratrix in the premises. Whereas your orator and oratrix charge and humbly insist, that if any paper was executed by your oratrix purporting to be a release, the same was executed under the circumstances aforesaid shortly after your oratrix attained the age of twenty-one years, at a time when she was destitute of counsel or friends to advise her, without examining any of the papers handed to her when the said paper was so signed; her sole inducement to execute the same being the entire confidence which she reposed in the said I. T., and the full persuasion which she then entertained, that he would not require, or knowingly permit her to execute any instrument by which she would destroy or impair her just and legal rights; and therefore that the said paper purporting to be such release ought not to bar or preclude your orator and oratrix from claiming a true account of the said guardianship and payment of the money that may be due, or to protect the said Archibald T., I. T., R. D., I. M., junior, W. D., James Neilson and Jane his wife, and John T., or either of them, from responsibility upon the said bond, executed by the said Archibald T., I. T., I. D., deceased, and John T., as aforesaid. All which actings, doings and preferences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator and oratrix.

(1) In tender consideration whereof, and forasmuch as your orator and oratrix are remediless in the premises by the strict rules of the common law, and can only obtain relief in this honourable court, where matters of this nature are properly cognizable and relievable.

(2) To the end, therefore, that the said Archibald T., I. T., R. D., James Neilson and Jane his wife, John T. and their confederates, may, upon their several and respective corporal oaths, true, full, direct and perfect answer make to all and singular the matters herein before stated and charged, (3) (your orator hereby waiving, pursuant to the statute, the necessity of the answers of such defendants being put in under the oaths of such defendants, or the oath of either of them,) and that as fully and particularly as if the same were here repeated, and they thereto severally and specifically interrogated, and that they shall so answer, not only to the best of their respective knowledge and remembrance, but also to the best of their several and respective hearsay, information and belief. And especially may set forth and discover whether, in the month of June, 1818, the said I. T. delivered to your oratrix a bundle purporting to contain the accounts of his guardianship, and certain deeds and papers and securities for money; and whether the said I. T. did not then present to your oratrix a paper, and stated the same to be a release to him individually, and requested your oratrix to execute the same; and whether your oratrix did not sign and execute such paper at such time; and whether she examined or opened the same; and whether your oratrix had then consulted any friend or counsel as to such papers, or as to the release; and whether she did not exe-

(1) Clause of jurisdiction.

(2) Interrogating part.

(3) Waiver of answer under oath.

39 cuted the same from her confidence in her said guardian, and was not solicited and urged by the said I. T. to sign and execute the same.

(1) And that the said Archibald T. and I. T. may be decreed to render a full and true account to your orator and oratrix, of their said guardianship, and to pay to your orator and oratrix what upon such accounting may appear to be due, and that the said I. T., R. D., I. M., junior, W. D., James Neilson and Jane his wife, and John T., or such of them as may, notwithstanding the said release, be decreed to pay to your orator and oratrix, as securities upon the said
40 bond, such sum as your orator and oratrix may be entitled to in the premises; and that the said release may be declared to have been improperly obtained, and may be decreed to be delivered up and cancelled. And that your orator and oratrix may have such further relief, or may have such other relief, as the nature of their case may require and shall be agreeable to equity. (2) May it please your honour to grant unto your orator and oratrix the writ of subpoena, to be directed to the said Archibald T., W. D., I. T., R. D., I. M., junior, *James Neilson and Jane his wife, and John T., junior*, commanding them, and each of them, by a certain day, and under a certain penalty therein to be in-
41 serted, to be and appear before our chancellor in our court, of chancery, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience. And your orator and oratrix shall ever pray, &c.

B. R., Solicitor for Complainants.

R. H., of Counsel for Complainants.

No. 3.—Page 53.

PRAYER WHERE THE UNITED STATES OR A STATE IS A PARTY.

And may it please your honour, that the district attorney of the United States for the Southern District of New-York, [*or the Attorney-General of the State of New-York,*] being attended with a copy of this bill, may appear and put in an answer thereto, and may stand to and abide such order and decree in the premises as to your honour shall seem meet. (Willis' Equity Pleading, p. 7. Mitford, p. 24.)

In Case of a Corporation.—p. 53.

And that the said The President, Directors, and Company of, &c., may appear according to law and the course of this court.

No. 4.—Page 53.

REFERENCE TO A PAPER IN COMPLAINANT'S HANDS.

"As by the said conveyance in your orator's possession and ready to be produced, as this honourable court shall direct, will on reference appear."

(1) Prayer for relief.

(2) Prayer for process.

If recorded.

As in the preceding form to the words "shall direct," inclusive—*then* "or by the record thereof duly recorded in the office of register in and for the city and county of New-York, in Liber of Conveyances, p. on the day of 1826, will on reference appear."

No. 5.—Page 53.

REFERENCE TO A PAPER IN DEFENDANT'S HANDS, AND SOUGHT TO BE SET FORTH OR PRODUCED.

As by the said instrument in writing which your orators allege is in the possession, or under the control of the defendants hereinafter named, some or one of them, and which your orators pray may be set forth fully and truly in their or his answer to this bill of complaint, or may be produced and submitted to your orators' inspection as this honourable court shall direct, will on reference appear.

No. 6.—Page 53.

FOR AN ACCOUNT OF PERSONAL ESTATE.

And that the defendants hereinafter named may discover and set forth a full, true, and particular account of all and singular the personal estate and effects of the said testator, and of every part thereof which hath been possessed by, or come to the hands of the said defendants, or either of them, or to the hands of any other person or persons, by their or either of their order, or for their or either of their use ; with the particular nature, quantities, qualities, and true and utmost values thereof, and of every part thereof respectively ; and how the same and every part thereof hath been applied and disposed of ; and whether any, and what part thereof, now remains unapplied and undisposed of, and why ; and whether any, and what part of such personal estate remains outstanding to any, and what amount, and why ; and that the said defendants may also set forth an account of the debts due from the said testator, and of his funeral expenses and legacies ; and whether any, and which of such debts are outstanding, and why ?

No. 7.—Page 53.

FOR THE PRODUCTION OF DEEDS AND PAPERS.

And that the defendants hereinafter named may set forth a list or schedule, and description of every deed, book, account, letter, paper, or writing, relating

to the matters aforesaid, or any of them ; or wherein, or whereupon there is any note, memorandum, or writing, relating in any manner thereto, which now are, or ever were in their, or either, and which of their possession or power, and may particularly describe which thereof now are in their, or either, and which of their possession or power, and may deposit the same in the hands of the register of this court, for the usual purposes ; and otherwise, that the said defendants may account for such as are not in their possession or power.

No. 8.—Page 54.

PETITION OF INFANT FOR A NEXT FRIEND.

In Chancery,

Before the Chancellor. (1)

To the Chancellor of the State of New-York.

The petition of M. E. K., an infant, under the age of twenty-one years, viz., of the age of fifteen years and upwards, respectfully sheweth :—

That it is intended to bring a suit in this honourable court, by and on behalf of your petitioner, as sole plaintiff, against A. T., J. T., &c., [names of the intended defendants.] Your petitioner therefore prays, that W. B., of the city of New-York, merchant, may, by an order of this honourable court, be appointed to appear as next friend of your petitioner in such suit, he having given his written consent thereto.

And your petitioner, &c.

M. E. K.

I hereby consent to be next friend of M. E. K., the above named infant petitioner, and to appear as such in the suit above mentioned, intended to be brought in this court.

Dated, &c.

W. B.

No. 9.—Page 54.

ORDER FOR APPOINTMENT.

In Chancery,

Before the Chancellor, (2)

In the matter of the petition
of M. E. K., an infant.

The petition of M. E. K., an infant, and the consent of W. B. in writing, having been this day exhibited to me, and the said W. B. having personally appeared before me, and duly acknowledged that he signed and executed such written consent, [or, and it having been duly proven to me by the oath of A. B., that the said W. B. signed and executed such written consent,] I do hereby order, pursuant to the statute in such case provided, that the said W. B. be, and he is hereby appointed, next friend of the said M. E. K., the infant petitioner,

(1) Or Vice-Chancellor of the circuit.

(2) Or Vice-Chancellor.

to appear as such in the suit intended to be brought in this court, against A. T., &c., [names] mentioned in such petition.

Dated, New-York, May 1831.

W. T. M'C., V. C.
(or) A. B., Master Chan.

No. 10.—Page 55.

COMMENCEMENT OF BILL BY AN INFANT.

Complaining, sheweth unto your honour, your oratrix, M. E. K., an infant, under the age of twenty-one years, that is to say, of the age of seventeen years, or thereabouts, by E. M., of the city of New-York, merchant, her (relation and) next friend, that, &c.

Note—The bill proceeds as if the complainant was an adult. The next friend signs it.

No. 11.—Page 63.

COMMENCEMENT OF A BILL OF A MARRIED WOMAN BY A NEXT FRIEND.

Complaining, sheweth unto your honour, your oratrix C., the wife of A. B., of, &c., by D. E., her next friend, that, &c.

I hereby consent that D. E. be and act as my next friend, in the prosecution of this suit.

Dated, &c.

No. 12.—Page 68.

PETITION TO SUE AS A PAUPER.

In Chancery,

Before the Chancellor.(1)

(Title of the cause,)

(or) In the matter of the petition
of M. E. K.

To the Chancellor of the State of New-York.

The petition of M. E. K., the above named complainant, sheweth, That your petitioner hath lately filed [*or is about to file*] her bill in this court against the above named defendants, [*or against I. T., A. T., &c.,*] (names of the intended defendants,) for the purpose in substance of setting aside an alleged instrument of release executed by your petitioner to the said I. T., and for an account of the personal estates belonging to your petitioner, received by said I. T. and A. T., the former guardians of your petitioner, and for general relief.

Your petitioner further sheweth, that she hath a good and meritorious cause

Upon reading and filing the petition of M. E. K., praying to be admitted by rule or order of this court to prosecute the suit mentioned in such petition as a poor person, it is ordered that it be referred to D. C., one of the masters of this court, to examine, &c., (pursue the words of the 141st rule down to the words, "officers of this court," inclusive,)—and such master is to make his report with all convenient speed.

I. W., Clerk.

Report.

The report will pursue the order—stating the perusal of the bill, that it contains a ground of equity cognizable, and detailing such facts as have been proven before the master respecting the property of the petitioner, as he deems expedient. If he finds that the petitioner is entitled to prosecute as a poor person, and has reasonable grounds of suit, he is then to report the names of suitable person to be assigned as solicitor and counsel. (Rule 141.)

No. 14.—Page 69.

ORDER OF ADMISSION.

(Title, ante, No. 13.)

At, &c., (ante, No. 13.)

Upon reading and filing the report of D. C., one, &c., bearing date, &c. [or, the report of D. C., one, &c., having been duly confirmed, upon reading the same,] and upon motion of, &c., it is ordered that M. E. K. named therein, (upon her filing with the assistant register of this court a bond to the people of this state, executed by herself, with two sureties to be approved of by D. C., one of the masters of this court, to pay and answer the cost of the defendants, if adjudged against her, down to the time of filing such bond,) be and is hereby admitted to prosecute the suit mentioned in such report and petition therein referred to, [or, the above suit,] as a poor person, and that B. R. be assigned to her as her solicitor, and R. H. as her counsel therein, as selected by the said master.

No. 15.—Page 71.

BOND FOR FORMER COSTS.

Know all men by these presents, that M. E. K., of the city of New-York, spinster, I. E., of the same place, merchant, and T. B., of the same place, gentleman, are held and firmly bound unto the (1) people of the state of New-York, in the sum of [one hundred dollars,] lawful money of the state of New-York, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seal, and dated the, &c.

(1) In England, to the king. 1 Fowler's Ex. Pr. 487.

Whereas in and by an order of the court of chancery of the state of New-York, bearing date the, &c., made in a cause depending in such court, wherein M. E. K. is complainant and I. T., &c., defendants, the said M. E. K. was admitted to prosecute such suit against the said defendants as a poor person, as by such order will more fully appear. Now the condition of this obligation is such, that if the above named M. E. K., the said complainant, shall well and truly pay, or cause to be paid unto the said defendants, I. T., &c., all such costs as shall be taxed and allowed to them respectively in the said cause, from the commencement of the said suit to the time of the admission of such complainant to prosecute *in forma pauperis*, in case the said complainant's bill shall be dismissed, or the said costs shall be otherwise adjudged to such defendants by any decree or order of this court, then this obligation to be void; otherwise to remain in full force and virtue.

(L. S.)

Master's Approval.

I certify, that I approve of the within bond, as to form, parties and execution; and that I. E. and T. B., the sureties therein named, appeared before me and justified under oath according to law, as appears by their affidavits hereto annexed.

Dated

D. C., Master in Chancery.

No. 16.—Page 71.

AFFIDAVIT OF SURETIES.

In Chancery,

(Title, ante, No. 13.)

State of New-York, }
 City and county of New-York, } ss. P. R., of the city of New-York, mer-
 chant, and I. B., of the same place, attorney at law, being severally duly
 sworn, depose and say—And first, the said P. R. for himself saith, *that he is*
a householder and resident in such city;(1) and is worth the sum of \$——
 over and above all debts which he owes, and responsibilities and liabilities
 which he has incurred or assumed, and the said I. B. for himself saith, &c.

(1) The 172d rule does not in terms require this in the oath; but it directs the sureties to *justify*. At law bail upon justifying swear to this effect. The same is expressly prescribed in the statute relating to bonds on injunctions to restrain proceedings at law. 2 R. S. 109. See 3 Paige, 38.

No. 17.—Page 76.

NOTICE OF BILL FILED, AFFECTING LANDS.

In Chancery,
(Title—ante, No. 13.)

To all whom it may concern.—Take notice, that a bill has been filed, and is now pending in the court of chancery of the state of New-York, wherein the above named M. E. K. is complainant, and I. T., &c., defendants, for the purpose of setting aside a conveyance executed by M. E. K., of the city of New-York, spinster, to I. T., of the same place, merchant, dated the day of of certain lots and parcels of ground lying in the city and county of New-York, and described as follows, to wit: "All," &c.

Dated, &c.

B. R., Sol. Comp.

No. 18.—Page 76.

PRAYER THAT THE DEFENDANTS BE RESTRAINED, AND FOR THE WRIT OF INJUNCTION IN A BILL.

(After the particular relief sought to be decreed, add:)—And that the said J. T., U. R., &c., their attorneys, officers, and agents, may be restrained by an injunction out of this court from proceeding further against your orator, in the action herein before mentioned as commenced against him, and now at issue in the superior court of the city and county of New-York, for the recovery of such pretended balance or amount; and also from instituting or proceeding upon any new or other action at law upon the subject matter of such pretended balance, or the claims or demands out of which the same is alleged to arise; and that your orator may have such further relief, or may have such other relief in the premises, as shall be agreeable to equity. May it please your honour to grant unto your orator, the people's writ of injunction, issuing out of and under the seal of this court, directed to the said J. T., U. R., their counsellors, attorneys, solicitors, and agents, commanding them, and each of them, absolutely to desist and refrain from proceeding further against, (as above.)

Note.—The above will show the formal parts of the prayer; it will of course vary in substance, according to the circumstances of each case.

No. 19.—Page 78.

JURAT TO INJUNCTION BILL, ANSWER, &c.

State of New-York, }
City and County of New-York, } ss. On this day of
before me personally appeared the above named A. B., and made oath that he
has read the above [bill,] [plea,] [answer,] [petition,] subscribed by him, (or

has heard it read,) and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

No. 20.—Pages 79 and 96.

JURAT TO A BILL BY A CORPORATION.

State of New-York, }
 City and County of New-York, } ss. J. F., of the city of New-York,
 being duly sworn, saith that he is now, and for some years past has been, the
 cashier of the Mechanics' Bank in the city of New-York, the corporation in
 the foregoing bill named, and the complainants therein; that by means of his
 office of cashier, he has acquired and possesses, as he verily believes, greater
 and more particular knowledge of and relating to the matters of the said bill,
 and the facts therein stated, than the president, or any or either of the members
 of such corporation, (a knowledge of such matters appertaining peculiarly to
 the province of the deponent as such cashier;) that he has read the said bill
 subscribed by him, and that the same is true of his own knowledge, except as
 to the matters which are therein stated to be on the information and belief of
 the complainants, and as to those matters he has been so informed and believes
 it to be true.

No. 21.—Page 79.

JURAT BY AN ATTORNEY IN FACT.

State of New-York, }
 City and County of New-York, } ss. M. H., of, &c., being sworn, saith,
 that T. V., the complainant in the foregoing bill of complaint, is now, as this
 deponent verily believes, absent from the city of New-York, viz. on a voyage
 to, or in the kingdom of Great Britain, he having left the city of New-York for
 Liverpool, in such kingdom, on or about the day of last past;
 that this deponent is the attorney in fact of said T. V., for the purpose of suing
 for and recovering the sum of money mentioned in such bill of complaint, by
 virtue of a power of attorney under seal, for that purpose duly executed and
 delivered; that this deponent has read such bill of complaint, and knows the
 contents thereof; and that this deponent has information as to all the matters
 stated therein, and from such information believes such matters to be therein
 truly stated, and such bill to be true.

No. 22.—Page 81.

CERTIFICATE FOR AN INJUNCTION.

I certify that I have perused the within bill, and am of opinion that an injunction should be issued, (pursuant to the prayer thereof,) and do allow the same to issue accordingly.

A. O. D.

October 29, 1831.

Master in Chancery.

No. 23.—Page 81.

ORDER FOR INJUNCTION.

(Title—ante No. 13.)

At, &c. (ante, No. 13.)

On filing the bill of complaint in this cause, and the certificate of A. O. D., the injunction master of the first circuit, thereon endorsed, allowing an injunction, pursuant to the prayer thereof, on the complainant, [pursue terms of allowance,] and the said complainant having this day filed the bond, &c., as required in such certificate, it is, on motion of, &c., ordered, that an injunction issue pursuant to the prayer of such bill and the said allowance; (and further that it be inserted in such injunction, that the defendant to this bill, J. K., be at liberty to proceed to judgment at law, without prejudice to the equitable rights of the complainant, notwithstanding such injunction.)

No. 24.—Page 81.

WRIT OF INJUNCTION.

The People of the State of New-York, to A. B., apd to his counsellors, attorneys, solicitors, and agents, and each and every of them, greeting:

Whereas, it has been represented unto us in our court of chancery, on the part of C. D., complainant, that he has lately exhibited his bill of complaint in our said court of chancery, before our *vice-chancellor of the circuit*, against you, the said A. B., to be relieved touching the matters therein complained of; in which bill it is stated, among other things, that you are combining and confederating with others to injure the said complainant, touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience: We, therefore, in consideration thereof, and of the particular matters in the said bill set forth, do strictly command you, the said A. B., and the persons before mentioned, and each and every of you, under the penalty of ten thousand dollars, to be levied upon your lands, goods, and chattels to our use, that you do absolutely desist and refrain from all further proceedings at law against the said C. D., upon, &c. (or as the case may be) until the further order of our said court of chancery. [If the defendant is permitted to proceed to judgment, agreeably to

the 33d rule, add,]—But you are at liberty, without prejudice to the equitable rights of the complainant, to proceed to judgment only in the suit at law which you have commenced against the said C. D., notwithstanding this *our writ.*

Witness, REUBEN H. WALWORTH, Esquire, chancellor of our said state, on the *first day of January*, one thousand eight hundred and *thirty.*

GEORGE THROOP, *Clerk.*

J. C. SPENCER, *Sol.*

(Endorsed) "By the Court."

GEO. THROOP, *Clerk.*

No. 25.—Page 82.

NOTICE TO CORPORATION ACCOMPANYING INJUNCTION AND SUBPENA.

(Title.)

Sir—Take notice, that the mayor, aldermen and commonalty of the city of New-York, are made parties to the above suit, only to prevent a payment by them to J. W. W., or to the executors of E. D., deceased, or to his or their order, of the sum of twenty-two hundred dollars, awarded by the commissioners for opening Fifth-street to said J. W. W., and that no appearance or answer of the said the mayor, aldermen, and commonalty is required in said suit.

New-York, June 28, 1832.

M. H., Sol. Compl.

To the Hon. WALTER BOWNE, Mayor, &c.

Sir.—Take notice that an injunction, of which the within is a copy, has been duly served on his honour the mayor. Your obedient servant,

M. H., Comp. Sol.

To G. B. S., Esq., Street Commissioner.

No. 26.—Page 83.

STATEMENT OF BILL WHERE ANSWER IS REQUIRED TO AID AN ACTION.

And your orator further shows, that he has been advised by his counsel, and verily believes, that he cannot safely proceed to trial at law without a discovery from the defendant of the several matters contained in this bill; that such matters are within the knowledge of the defendant, and that a discovery of them is requisite. And further, that your orator verily believes, that the answer of the said I. T. would furnish discovery material to the defence of such suit at law, and that your orator has not the means of obtaining evidence of such facts without such discovery. And your orator further shows, that he has applied to the defendant J. T., to give your orator information as to the matters contained in this bill of complaint, or to admit the facts of which a

discovery is herein sought, and that such defendant hath wholly, and without sufficient excuse, refused so to do.(1)

No. 27.—At Pages 80. 85. 87.

CERTIFICATE OF INJUNCTION OFFICER, WHERE SECURITY IS REQUIRED, OR MONEY DEPOSITED.

Under 31st Rule.—I certify that I have perused the within bill, and am of opinion that an injunction should issue, (pursuant to the prayer thereof,) and do allow the same to issue accordingly, upon the complainant filing with the assistant register of this court, a bond this day entered into by him, (with A. B. and C. D. as his sureties,)(a) to the defendant I. T., pursuant to the 31st rule of this court, on which bond I have endorsed my certificate of approval.

Under the 33d rule.—(As above, to “issue accordingly;”)—and I direct that a provision be inserted in such injunction, that the defendant to this bill, J. R., be at liberty to proceed to judgment at law in the suit in said bill mentioned, without prejudice to the equitable rights of the complainant, notwithstanding such injunction.

Under the 139th section of the statute.—As above, to word “bond,”—this day executed by him with A. B. and C. D. as his sureties, to J. K. the plaintiff, in the action at law mentioned in such bill, pursuant to the statute, on which bond I have endorsed my certificate of approval.

Under the 140th section.—Upon the complainant depositing with the assistant register of this court the sum of \$, being the amount of the verdict recovered in the cause mentioned in said bill, with the costs.

Under the 141st section.—Upon the complainant depositing, &c. (as above) and also filing, with the said assistant register, a bond, this day executed by him with A. B. and C. D. as his sureties, to J. K. the plaintiff, in the judgment mentioned in such bill, pursuant to the statute, on which bond I have, &c.

(a) *Note.*—The officer may take the party's bond with one surety or two in his discretion. But, under the sections of the statute, there must be two sureties.

No. 28.—At Pages 80. 85. 87.

BOND FOR SECURITY ON INJUNCTION BILL.

Know all men by these presents, that we, J. K., of the Village of Brooklyn, County of Kings, and State of New-York, and C. H. and J. D., of the same

(1) *Seymour v. Seymour*, 4 Johns. C. R. 411. *Appleyard, v. Seton*, 16 Vesey, 223. *White v. Steinwacks*, 19 Vesey, 83., overruling the former cases. *Hartley v. Hobson*, 2 Cox's Ca. 117, and *Farrar v. Lewis*, Dickens, 729. I do not find, however, that the particular points or facts of the discovery sought must be specified, as insisted upon by counsel, in these last cases. As to the last clause, see *King v. Clark*, 3 Paige, 76.

place, are held and firmly bound unto M. I., of Brooklyn aforesaid, widow, in the sum of \$4,000, lawful money of the United States of America, to be paid to the said M. I., her executors, administrators, or assigns. For which payment, well and truly to be made, we bind ourselves jointly and severally, and our respective heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the 2d day of January, in the year of our Lord, 18 :

Whereas the said M. I. hath commenced her suit against the said J. K., by filing her declaration in assumpsit, pursuant to the statute in such case made and provided, in the supreme court of judicature of the people of the state of New-York, which said suit has been referred, and is now pending and undetermined before the referees appointed therein; and whereas the said J. K. hath filed his bill of complaint against the said M. I., in the court of chancery of the state of New-York, praying, (among other things,) as well to have his account allowed and settled by the said M. I., as for an injunction to stay the further proceedings in the said suit at law. [And whereas also, after the issuing of the said injunction, at a court of chancery held for the state of New-York, on the 24th day of December, 18 , before William T. McCoun, vice-chancellor of the first circuit, on reading and filing the petition of the defendant in that cause in chancery, with the accompanying affidavits, praying that the penalty of the bond, filed by the complainant to authorize the issuing of the injunction, in said cause, might be enlarged; and, upon hearing the counsel of the respective parties, it was ordered, that the said complainant file, with the clerk of said first circuit, a new bond, with sufficient sureties, pursuant to the statute in such case made and provided, in the penal sum of four thousand dollars, within ten days, or, in default thereof, that the injunction issued in said cause be dissolved, and that it be referred to W. V., Esq., injunction master, to take said bond, as by reference to the said order will appear. And whereas also, the above bond is made and executed under and pursuant to the said order of the said court, in the place and as a substitute for the former bond, heretofore made and executed by the said J. K., complainant, and C. H., as surety, on the granting of the injunction against the said M. I.]

Now, therefore, the condition of the above obligation is such, that if the above bounden J. K. and C. H. and J. D., their executors, administrators, or any of them, shall, and do well and truly pay, or cause to be paid, to the said M. I., her executors, administrators, or assigns, all money which may be recovered by the said M. I., or her legal representatives, in the aforesaid action at law, in the said supreme court, for damages and for costs therein, and shall also pay such costs as may be awarded to the said M. I. by the court of chancery, on the bill filed by the said J. K., as aforesaid, then the above obligation to be void, otherwise to be and remain in full force and virtue.

Sealed and delivered in }
the presence of }

J. R. (L. S.)
C. H. (L. S.)
J. D. (L. S.)

I approve of the foregoing bond, both as to its form and manner of execution.

January 2d, 1834.

W. V. Master in Chancery.

City and County of New-York, ss. C. H., the obligor, named in the foregoing bond, being duly sworn, doth depose and say, that he is a housekeeper, and is worth the sum of ten thousand dollars, over and above all just debts, and all liabilities and responsibilities which he has incurred.

Sworn this 2d day of }
Jan. 1834, before me, }

W. V.
Master in Chancery.

No. 29.—Page 93.

PRAYER FOR A NE EXEAT IN BILL OR PETITION.

(*In a bill.*)—After the prayer for special relief—"And that the said defendant may be stayed by the people's writ of *ne exeat respública*, from departing out of the jurisdiction of this court. And that your orator may have such further relief," &c. (General prayer, ante, No. 2, fol. 39.) May it please your honour to grant unto your orator the people's writ of *ne exeat respública*, staying the said *I. T.* from departing into parts beyond this state, and out of the jurisdiction of this court, without leave first had.

Note.—It will be observed, that if the bill is originally framed for a *ne exeat*, and is sworn to for the purpose of obtaining it, it must contain all the substantive allegations which are necessary in the affidavit, upon which the writ is always obtained in England, and here, when applied for, without being sought in the bill. See the form of the affidavit, next precedent, No. 30.

If a *petition* is resorted to, the affidavit will be a guide in framing it.

No. 30.—Page 93.

AFFIDAVIT TO OBTAIN A NE EXEAT.(1)

(Title)

State of New York }
County of } ss.

N. G., the above named complainant, being duly sworn, saith, that the said S. P. formerly entered into an agreement with this deponent to fit out and put a cargo on board of a certain vessel, called the *Mary*, for a voyage from the city of New-York to the island of Jamaica, and from such island, to the town of Boston, in the state of Massachusetts. That accordingly, such vessel was engaged and fitted out, and a cargo put on board; and that the said defendant S. P. went out as master and supercargo of such vessel and her cargo, and with full power to dispose of the same. That the said S. P. proceeded to the said land of *Jamaica*, and there sold and disposed of the cargo of such vessel, and with

(1) It is most usual to put the facts in the shape of a petition.

the proceeds thereof purchased a quantity of rum and sugar, and loaded the vessel with the same, and therewith proceeded to the town of Boston aforesaid, where he sold and disposed of such cargo, and received the proceeds thereof. And further this deponent saith, that the said *S. P.* has rendered to this deponent sundry accounts of his transactions and dealings in and about such adventure, and the avails and proceeds thereof, and this deponent has also rendered to the said *S. P.* divers accounts relating to the same, which have been acquiesced in and agreed to by the said *S. P.* And this deponent saith, that upon such account respectively it appears, that the said *S. P.* is justly indebted to this deponent in the sum of \$2000, by the admission of the said *S. P.* But this deponent says, that such accounts rendered by the said *S. P.* are, in several respects, erroneous, and contain divers improper and over charges against such adventure and this deponent, and have omitted divers proper credits to be given in account with the same. And this deponent verily believes, that upon a fair and just account to be made up, stated and settled, between this deponent and the said *S. P.*, in relation to such adventure and transactions, he, the said *S. P.*, would be found justly and truly indebted to this deponent in the sum of \$3000., lawful money of the United States, for which debt, or sum of money, this deponent hath not received any security or satisfaction. And this deponent further saith, that he hath lately filed his bill in this court against the said *S. P.*, setting forth the premises fully and at large, and specifying various errors, overcharges, and omissions in such accounts rendered by the said *S. P.*, and praying that an account may be truly settled and stated under the direction of this court, and that this deponent may be paid the balance which shall be found due thereupon. To which bill of complaint the said *S. P.* has appeared, but has not answered the same. And this deponent further saith, that the said *S. P.* has declared his intention to leave the state of New-York, and to proceed to England, where he intended to settle and reside, and that the said *S. P.*, on or about the day of last, informed one *S. K.* to that effect, as by the affidavit of the said *S. K.* appears. And this deponent verily believes, that if the said *S. P.* goes out of the state of New-York, according to his intention, he will not return; and thereby this deponent will be in great danger of losing his said debt. [*Clymer v. Strobe*, 2 Turn. Prac. 49.] See also Eq. Draft, 8d ed. p. 524, N. Y. ed.

No. 31.—Page 102.

ORDER FOR SUBPENA TO ISSUE.

(Title, No. 13.)

At, &c. (See ante, No. 13.)

On filing the complainant's bill of complaint in the above entitled cause, and on motion of Mr. R., solicitor for the complainant, it is ordered that a subpoena issue out of and under the seal of this court agreeable to the prayer of said bill.

No. 32.—Page 103.

SUBPENA.

The people of the State of New-York to A. B., greeting:

We command you that you personally appear before our chancellor, (or our vice-chancellor, of the circuit,) in our court of chancery, on the day of next, wheresoever the said court shall then be, to answer to a bill of complaint exhibited against you in our said court by C. D., and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty of two hundred and fifty dollars. Witness REUBEN H. WALWORTH, chancellor of our said state, at the city of New-York, the first day of January, in the year of our Lord one thousand eight hundred and thirty.

B. F. B., Solicitor.

I. P., Register.
Or, J. W., Clerk.

No. 33.—Page 103.

AGAINST A CORPORATION.

That you appear according to law and the course of practice in this court before our chancellor, &c.

No. 34.—Page 107, n.

NOTICE OF INTENDED APPLICATION FOR GUARDIAN AD LITEM.

(Title.)

Take notice, that unless a guardian *ad litem* is appointed for the infant defendants, P. V., W. V., and H. V., before Tuesday, the eleventh day of October next, the court will be moved on that day at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, to appoint a suitable person as the guardian for such infants.

Dated New-York, September 6th, 1831.

To C. V., mother of the above named	}	Y ^{rs.} , &c. M. H., Spl. Comp.
infants, and to P. V., and W. V., over		
the age of fourteen years.		

No. 35.—Page 108.

PETITION THAT ATTORNEY OF THE UNITED STATES APPEAR, &c.

In Chancery,

To the Chancellor of the State of New-York.

The petition of W. I., of the town of Oyster Bay, in the county of Queens, respectfully sheweth:

That your petitioner did, on the twenty-eighth day of June last past, file his

bill in this honourable court against S. F. L., administrator of the goods and chattels, rights and credits, which were of D. R. L., deceased, and others, defendants, to procure a sale of certain premises mortgaged by the said D. R. L. to your petitioner, for the purpose of satisfying to your petitioner the amount secured to be paid on the said mortgage; that the said S. F. L. is a party defendant to the said suit, not only as administrator as above mentioned, but also in his own right as one of the heirs of the said D. R. L., and as such heir, entitled to an undivided share of the said mortgaged premises, subject to the said mortgage. That the United States of America having obtained divers judgments in the district court of the United States for the southern district of New-York, against the said S. F. L., which, or some of which, are now standing open and unsatisfied of record, those judgments are briefly set forth in your petitioner's said bill, and the same concludes with a prayer that R. T., the district attorney for the said United States for the southern district of New-York, who is attorney on record in the said suits, may, upon being attended with a copy of the said bill, appear thereto for and on behalf of the said United States, and may put in an answer to the said bill for and on their behalf. And your petitioner further sheweth, that a copy of the said bill hath been duly served on the said district attorney, as by the affidavit hereto annexed may particularly appear; but that the said district attorney has not caused his appearance to be entered for the said United States of America, conformably to the prayer of the said bill.

Your petitioner, therefore, respectfully prays, that your honour will be pleased to appoint a short day for the said district attorney to cause his appearance for the said United States of America to be entered to the said bill; and an answer thereto, to be filed for and on their behalf, according to the prayer of the said bill; and in default thereof, that the said bill be taken as confessed by the said district attorney.

And your petitioner will ever pray, &c.

Dated, &c.

W. T.

By D. S. JONES, his Solicitor.

Affidavit.

In Chancery,

(Title.)

City and county of New-York, ss. G. W., of the said city, student at law, being duly sworn, deposeth, that he did, on the seventeenth day of July instant, serve a true copy of the bill of complaint filed in the above entitled cause, on R. T., Esq., district attorney of the United States of America for the southern district of the state of New-York, by delivering the same to the said R. T. in person; and further this deponent saith not.

Sworn this day of)
July, before me }

G. W.

No. 36.—Page 108.

ORDER.

(Title.)

At, &c. (Ante, No. 13.)

On reading and filing a petition of W. I., the complainant in the above cause, dated the 25th day of July instant, and also on reading and filing an affidavit of G. W., setting forth that he did, on the seventeenth day of July instant, deliver a true copy of the original bill filed in this cause to R. T., district attorney of the United States for the southern district of New-York, in person; and on motion of D. S. J., Esq., solicitor, and of counsel for the complainant, it is ordered that the said R. T. do cause his appearance for the said United States of America, to be entered to the said bill, and an answer to be filed thereto for and on their behalf, within forty days after the service of a copy of this order on him, or in default thereof that the said bill be taken as confessed by the said district attorney.

JAMES PORTER, Register.

No. 37.—Page 116.

AFFIDAVIT OF SERVICE OF SUBPŒNA.

(Title.)

State of New-York, }
 City and county of New-York, } ss. A. B., of the city of New-York, clerk in the office of B. R., Esq., solicitor for the complainants, being duly sworn, saith, that on the day of instant he served the subpoena issued in this cause, *and which is hereunto annexed*, upon I. T., one of the defendants named therein, by delivering a copy of the same to him personally, at the same time showing him the original, with the seal of this court impressed thereon; (1) that such copy was subscribed B. R., solicitor for the complainants, and inscribed "copy;" and further, that the said I. T. lives in the city of New-York.

[Or, omit the words in italics, if the original is not annexed, and add after the words "impressed thereon" as follows:] by which said subpoena, the said defendant was commanded to appear in this court on the day of instant, at the suit of the said named I. K. and M. E. K.

No. 38.—Page 116.

ORDER FOR ATTACHMENT, AND ATTACHMENT.

(Title, No. 13.)

At, &c. (No. 13.)

It appearing by the affidavit of A. B., this day filed, that a subpoena, with the seal of the court impressed thereon, tested on the day of last, and returnable on the day of last, was duly served upon the defendant I. T., on the day of last; and that such defendant resides within 50 miles

(1) The affidavit will be varied according to the mode of service under the 21st r^q

of the office of clerk of this court, to wit, in the city of New-York; and it also appearing from the affidavit of M. M., solicitor for the complainant, that no notice of an appearance on behalf of the said *I. T.*, has been received by him, and that he verily believes no appearance has been entered for the said *I. T.*—thereupon, on motion of, &c., it is ordered, that an attachment issue against the said *I. T.*

Writ of attachment.

The People, &c., to the Sheriff, &c. We command you, that you attach A. B., so as to have his body before our (vice-chancellor of the circuit,) in our court of chancery, on the second Tuesday of February next, wheresoever the said court shall then be; there to answer unto us, as well touching the contempt which he, as is alleged, hath committed against us, as also such other matters as shall then and there be laid to his charge; and further, to perform and abide such order as our said court shall make in this behalf. And have you then there this writ, and make and return a certificate under your hand, of the manner in which you shall have executed the same.

Witness, REUBEN H. WALWORTH, Esq., chancellor of our said state, at the the first day of January, one thousand eight hundred and thirty.

J. S., Solicitor.

A. F., Clerk.

No. 39.—Page 118.

ENDORSEMENT ON ATTACHMENT.

In Chancery,

Before the Vice-Chancellor of, &c.

J. K.

v.

I. T. & I. T.

Attachment for not appearing to the bill of J. K. and M. E. his wife, returnable the day of 1830. Let the defendant *I. T.* give security for his appearance in the sum of \$100. Dated, &c.

O. E., V. C.

"Not found."

J. SHAW, Sheriff.

Alias attachment.

After the words "*command you*," insert "*as you were before commanded*." It is endorsed as above—the word *alias* being prefixed.

Pluries attachment.

Insert after the words "*command you*" the following, "*as you were oftentimes before commanded*."

(Similar endorsement and order of vice-chancellor to take security in \$100.)

Return "*defendant taken*."

J. S., Sheriff.

[The above were the forms used in *Taintor v. Thompson*, Sept. and Oct. 1830.]

Nq. 40.—Page 119.

BOND TO THE SHERIFF.

Know all men by these presents, that we, I. T., of the city of New-York, and C. P. and M. S., of the same place, gentlemen, are held and firmly bound unto James Shaw, sheriff of the city and county of New-York, and his assigns, in the penal sum of one hundred dollars, to be paid to the said James Shaw, sheriff, or his assigns; and for the said payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated, &c. &c.

Whereas the above named I. T. has been arrested upon an attachment issued out of, and under the seal of this court, for not appearing to a bill of complaint, filed in this court, wherein J. K. and M. E. are complainants, and the said I. T. impleaded with others is a defendant, and is now in the custody of J. S., sheriff, as aforesaid.

Now the condition of this obligation is such, that if the above bounden I. T. shall appear on the day of (*the return day of such attachment*) before our vice-chancellor of our first circuit, in our court of chancery, wheresoever the said court shall then be, to answer to the matter alleged against him, (1) and to perform and abide by the order and judgment of the said court thereupon, (2) then this obligation to be void, otherwise to be and remain in full force.

Sealed and delivered }
in the presence of }

Return to an attachment—Bond given.

I have attached and let the defendant at large on bail, according to the annexed bond.

J. S., Sheriff.

No. 41.—Pages 121, 122, 123, and 131.

ORDER OF COMMITMENT, WHERE AN APPEARANCE IS ENTERED BY THE REGISTER.

I. K. and M. E. K., his wife, }
v. }
I. T. }

At, &c. (Ante, No. 13.)

It appearing to this court that the defendant, I. T., being in contempt for not appearing to the bill of I. K. and M. E. K., the complainants herein, a writ of attachment had issued against him, directed to the sheriff of the city and county of New-York, returnable this day; whereupon the said sheriff hath returned that (*he had attached the defendant, and had let him at large on bail according to a bond annexed to such attachment,*) and the said defendant now

(1) 2 R. S. 536, § 11.

(2) Ibid. 537, § 13.

being, by virtue of such attachment, personally before the court, and persisting in his said contempt by refusing to appear to such bill, and to pay the costs now incurred, and this court now adjudging such defendant to have been guilty of the misconduct alleged, and that such misconduct of the said I. T. was calculated to, or did actually defeat, impair, impede, or prejudice the rights or remedies of the complainants in this cause—it is thereupon, on motion of B. R., solicitor for the said complainants, ordered, that J. W., assistant register (*the clerk*) of this court, be, and he is hereby appointed, to enter the appearance of the said defendant in this cause, pursuant to the statute in such case made and provided. And it is further ordered, that the said I. T. do pay to the said complainants the costs consequent upon his contempt hitherto incurred, now taxed at the sum of And it is further ordered, that the said I. T. be, and he is hereby ordered to stand committed to the common jail of the city and county of New-York, there to remain charged upon this contempt until he shall have paid the costs of such contempt hitherto incurred, and now taxed at the sum of And further, that a warrant issue for that purpose. (1 *Fowler's Ex. Pr.* 231. *Eq. Drfts.* 597. 2 *R. S.* 538, § 20 and 24. *Lovett v. Rogers.*)

No. 42.—Pages 121, 122, 123, and 131.

ORDER OF COMMITMENT, WHERE DEFENDANT APPOINTS A SOLICITOR TO APPEAR.

(As in the form No. 41, to the words "personally before the court," inclusive, then)—"And now, in open court, appointing and requesting C. B., a solicitor of this court, to enter an appearance for him in this cause, according to the rules of this court; and the said C. B., consenting to appear in his behalf, and now entering his appearance, and the said I. T., persisting in his said contempt, by refusing to pay the costs now incurred." (The residue of the order can readily be framed from the form No. 41.)

No. 43.—Pages 121, 122, 123, and 131.

ORDER WHERE A FUTURE TIME IS APPOINTED.

(The same as in precedent 41, to the words "personally before the court," inclusive; *then* as follows:—) And consenting to enter his appearance in the said suit of the said complainants herein, and to pay the costs of his contempt hitherto incurred when duly taxed, on motion, &c., it is ordered, (that the bill of costs consequent upon such contempt be taxed by, &c., within *two* days from this date, and a copy thereof, with notice of the hour and place of such taxation, be delivered one day prior thereto to the said I. T.; and further,) that the said I. T. do cause his appearance to be entered with the clerk of this

court, to the bill of complaint of such complainants, and do pay the costs(1) [to be] taxed, within three days from the date of this order, or that such complainants may apply to this court for such further order as may be just. And it is further ordered, that the bond executed by the said I. T., with his sureties, be continued over, and that the said I. T. do attend this court from day to day until the further order of this court.

No. 44.—Page 123, and p. 131.

ORDER FOR DISOBEDIENCE OF LAST ORDER.

[This order may easily be framed from the preceding forms. It will state the above order—the taxation—service of a certificate of taxation and demand, and refusal to pay; also a certificate of the clerk of the appearance not being filed. The order will then pursue the terms of No. 41, if the solicitor has an appearance entered by the clerk.]

No. 45.—Pages 121, 122, 123, and 131.

WARRANT OR MITTIMUS UPON THE PRECEDING ORDERS.

(L. S.) The People of the State of New-York, to the Sheriff of the City and County of New-York, greeting:

Whereas, on the day of 1830, by a certain order made in our court of chancery, before our vice-chancellor of the first circuit, at the city of New-York, in a certain cause or matter depending in our said court, between J. K. and M. E. K., his wife, plaintiffs, and I. T., defendant, it was ordered that the said I. T. be committed to the common gaol of the city and county of New-York, there to remain, charged with the contempt mentioned in such order, until [pursue the words of the order,] and that a warrant for that purpose issue. *Now we command you*, that you take the body of the said I. T., and him closely and safely keep in your custody, in the common goal of the city and county of New-York, until he shall have, &c. [directions of the order,] and shall pay the costs and expenses, taxed as aforesaid, at the sum of with your fees on this writ, or until our said court of chancery shall make order to the contrary, and you are to make and return to our said chancellor, in our said court of chancery, on the (2) day of in the year eighteen hundred and thirty, wheresoever it shall then be, a certificate under your hand of your doings in the premises, together with this writ.

Witness, REUBEN H. WALWORTH, chancellor of our said state, at the city of Albany, the day of one thousand eight hundred and thirty.

B. R., Solicitor.

JAMES PORTER, Register.

(*Lovett v. Rogers*, 2 Paige, 104. *Ex parte Whitechurch*, 1 Atk. 56.)

(1) If taxed by the vice-chancellor forthwith, as they may be if prepared, omit the words between brackets, and insert instead, "Now here taxed at the sum of \$."

(2) Ensuing motion day, properly.

SHERIFF'S RETURN TO WARRANT.

I, J. S., sheriff of the city and county of New-York, hereby certify to the chancellor, that under and by virtue of the within writ, I have taken and kept, and do still keep, the within named I. T. in my custody, in the gaol of the city and county of New-York, as in the said writ I am commanded. Given under my hand, at the city of New-York, this day of April, A. D. 1830.

No. 46.—Pages 123 and 124.

ORDER FOR ALIAS ATTACHMENT, PROSECUTION OF BOND, &c.

(Title.)

At, &c.

The sheriff of the city and county of New-York having returned the writ of attachment issued in this cause, against the defendant J. T., "taken," together with the bond taken by him, upon the arrest of the said defendant; and the said defendant being now in open court called, and failing to appear—on motion of B. R., of counsel for the said complainants, it is ordered, that the said bond, being forfeited, may be prosecuted by the said complainants. And it is further ordered, that an alias attachment issue against the said defendant J. T., directed to the sheriff of the city and county of New-York, returnable on the day of instant, (or immediately,) before our *chancellor*, in our court of chancery, wheresoever our said court shall then be. And it is further ordered, that the defendant be held to bail upon such writ in the sum of \$100.(1)

Alias Attachment.

See Attachment, No. 38. Inserting the words, "as you were before commanded."

Endorsed.

By special order of the court. Hold the defendant to bail in \$100.

J. P., *Register.*

No. 47.—Page 125.

ORDER FOR PLURIES ATTACHMENT—NOT BAILABLE.

Follow the preceding form, No. 46, (inserting the word "alias" in the second line of the recital,) to the words *further ordered*—then, "that a pluries attachment, not bailable, issue," &c.

Pluries Attachment.

See Attachment, ante, No. 38—inserting, "as you were often before commanded."

Endorsed.

By special order of the court, not bailable.

J. P., *Register.*

(1) See the Treatise, p. 117, as to the necessity of this clause.

No. 48.—Page 132.

SHERIFF'S RETURN TO ATTACHMENT WHERE THE PARTY IS IN CUSTODY.

To, &c. I return to this writ that I have arrested the defendant thereon, and that he is in my custody by virtue of a writ of *capias ad satisfaciendum*, issued out of the court of common pleas of the city and county of New-York, at the suit of the Atlantic Insurance Company.

New-York, March

J. S., Sheriff.

No. 49.—Page 132.

ORDER FOR A HABEAS CORPUS CUM CAUSIS.

(Title.)

At, &c.

It appearing to this court that an attachment having issued against the defendant for not appearing to the plaintiff's bill of complaint, directed to the sheriff of the city and county of New-York, the said sheriff hath returned thereto that he hath arrested the said defendant thereon, and that he remained safe in his custody by virtue of, &c.—it is thereupon, on reading such attachment and the return of said sheriff thereto, and on motion of A. B., Esq., solicitor, &c., ordered, that an habeas corpus *cum causis* issue, directed to the said sheriff, to bring the said defendant forthwith before this court, at the city of Albany, to answer his contempt,

No. 50.—Page 132.

HABEAS CORPUS.—(Hind., 112. 1 Fowler, 217. *Lovett v. Rogers.*)

(L. S.) The People, &c. To the Sheriff of, &c. We command you, that you have the body of W. R. detained in your prison under your custody, as it is said, under safe and secure conduct, together with the day and cause of his being taken and detained, by whatsoever name he may be called in the same, before our chancellor in the city of Albany forthwith, (1) to do and receive all and singular those things which our said chancellor shall then and there consider of him in this behalf, and have you then and there this writ.

Witness, R. H. W., Chancellor of our said state, at the city of Albany, the 5th day of January, in the year of our Lord one thousand eight hundred and thirty.

D. L., Solicitor.

J. P., Register.

(1) Or, on the day of instant.
5

In Chancery.
(Title cause.)

Endorsed,

D. LORD, Sol.

Habeas Corpus.

Allowed by the court of chancery this 5th day of Jan. 1830. R. H. W., Ch.

Sheriff's Return.

I return to this writ that the defendant is in my custody by virtue of a writ of *capias ad satisfaciendum*, issued out of the court of common pleas of the city and county of New-York, at the suit of the Atlantic Insurance Company, a copy of which writ is hereto annexed.

J. S., Sheriff.

Note—See 2 R. S. 566, § 32.

No. 51.—Page 134.

BOND TO THE SHERIFF.

Know all men by these presents, that we, I. L. and P. J., of the city of New-York, merchants, are held and firmly bound unto James Shaw, Esq., sheriff of the city and county of New-York, in the sum of, (&c., in the usual form.) Whereas W. R. is at this time a prisoner in the custody of the said James Shaw, sheriff as aforesaid, on execution, in the limits of the gaol of the city and county of New-York; and whereas a writ of *habeas corpus* hath been issued out of the court of chancery of the state of New-York, and under the seal of the said court, directed to the said James Shaw, sheriff as aforesaid, commanding him to have the body of the said W. R. in his custody forthwith before the chancellor of the state of New-York, at the city of Albany, together with the day and cause of his being detained; now the condition of the obligation is such, that in case the said W. R. shall be remanded to the custody of the sheriff on the said execution, if the said obligors above named, or either of them, shall pay to the said James Shaw, sheriff as aforesaid, the charges of carrying back the said W. R. so remanded, and if the said W. R. shall not escape from the custody of the said sheriff by the way, in going to, or returning from the said city of Albany, in obedience to the requisition of the said writ of *habeas corpus*, then the above obligation to be void: otherwise, to remain in full force and virtue.

Sealed and delivered }
in the presence of }
W. E.

I. L. (Seal.)
P. J. (Seal.)

No. 52.—Page 139.

ATTACHMENT WITH PROCLAMATIONS.

(L. S.) (The people, &c.) See ante, No. 45. We command you on our behalf to cause public proclamation to be made in all places within your bailiwick, as well within liberties as without, wheresoever you shall think it most convenient, that I. T. do upon his allegiance, on the day of next, (*return day*,) personally appear before us in our court of chancery, wheresoever it shall then be; and nevertheless, in the mean time, if you can find the said I. T., attach him, so as to have his body before our *chancellor* (or vice-chancellor,) in our court of chancery, on the Tuesday of next wheresoever the said court shall then be, there, &c., [as in the Attachment, No. 39.]

For the endorsement, &c., see ante, No. 39.

No. 53.—Page 140.

COMMISSION OF REBELLION.—[Hind., 120.]

(L. S.) The People, &c., to A. M., B. C. and L. R., greeting:

Whereas by public proclamations, made on our behalf by the sheriff of the city and county of New-York, in divers parts of that county, by virtue of our writ to him directed, I. T. has been commanded, upon his allegiance, personally to appear before us in our court of chancery at a certain day now past, yet hath manifestly contemned our said command—now, we command you jointly and severally to attach, or cause the said I. T. to be attached, wheresoever he shall be found within our state, as a rebel and contemner of our laws, so as to have him, or cause him to be before us in our said court, on, &c., wheresoever it shall then be, to answer us, as well touching the said contempt, as also such matters as shall be then and there objected against him; and further to perform and abide such order as our said court shall make in that behalf; and hereof fail not. We also hereby strictly command all and singular, mayors, sheriffs, bailiffs, constables, and other our officers and citizens, and whomsoever, as well within liberties as without, that they by all proper means diligently aid and assist you, and every one of you, in all things in the execution of the premises.

J. W., Ass't. Reg'r.

B. R., Sol. Comp.

Endorsed.

By the court. Commission of rebellion against I. T. for not appearing.

No. 54.—Page 144.

ORDER FOR SHERIFF EXECUTING THE DUTIES OF SERGEANT AT ARMS.

In Chancery,

(Title of the cause.)

At, &c.

The above named defendant I. T., being in contempt for not appearing to the bill of complaint of the above named complainant, and a commission of rebellion having been heretofore issued under the seal of this court, directed to certain commissioners therein named, commanding them to attach the said defendant I. T. as a rebel and contemner of the laws, and to have him before this court on the day of last. And the said commissioners, or two of them, having returned that they had endeavoured to attach said I. T., but had not been able to find him; as by such commission, and the return thereto now produced and read to this court appears. It is therefore, on motion of B. R., solicitor for the above named complainants, ordered, that the sheriff (*of the city and county of New-York,*) now attending this court, at its present term, and executing all the powers and duties of a sergeant at arms, do forthwith go and take the said defendant I. T. into his custody, and him safely keep, and bring him immediately into this court before the *chancellor* thereof, to answer for his said contempt, and to do and receive what this court shall thereupon further order in the premises. And the said sheriff is hereby required to certify to this court his proceedings, by virtue hereof, with all convenient speed.

[1 Fowler's Ex. Pr. 166.]

No. 55.—Page 144.

WARRANT, ON THE ABOVE ORDER.

(L. S.) The people, &c.—To the sheriff of the county of now attending this court at its present term pursuant to the statute, and executing all the powers and duties of a sergeant at arms: Whereas an order was heretofore made in our court of chancery before our chancellor, dated the day of in a cause depending in such court, wherein I. K. and M. E. K. were plaintiffs, and I. T. and others defendants, that the sheriff of the city and county of New-York, now attending this court at its present term, and executing all the powers and duties of a sergeant at arms, do forthwith go and take the defendant I. T. into his custody, and bring him into this court, to answer for the said contempt, and to do and receive what this court should thereupon order in the premises. *These* are, therefore, in pursuance of such order, to will and require you forthwith, upon receipt hereof, to make diligent search after the body of the said I. T., and wherever you shall find him, to arrest and apprehend him, and to bring him immediately before our court of chancery, before our (*chancellor*) thereof, wheresoever such court shall be, to answer for his said contempt; willing and requiring all mayors, sheriffs, justices of the peace, constables and

other officers and citizens, to be aiding and assisting you in the due execution of the premises. And this shall be to you, or any of you that shall do the same, a sufficient warrant.

Dated this day of, &c.

R. H. W., Chan.

Return—Endorsed.

To the chancellor, &c.

These are to certify, that in pursuance of the within warrant and order therein mentioned, I have made diligent search and inquiry after the said defendant I. T., but that he doth so abscond and secrete himself, that he cannot be found to be apprehended.

Dated, &c.

J. S., Sheriff attending the court, &c.

No. 56.—Page 145.

ORDER FOR A SEQUESTRATION.

In Chancery.

I. K. and M. E. K. }
 v. }
 I. T. }

At, &c.

Whereas the defendant, I. T., being in contempt for not appearing to the bill of complaint of the above named complainant, and a warrant having issued to the sheriff of the city and county of New-York, attending this court at *its present term*, and executing all the powers and duties of a sergeant at arms, requiring him to arrest and apprehend such defendant, and bring him (*immediately*) before this court, in pursuance of an order of this court, dated the day of instant; and the said sheriff having returned thereto that he doth so abscond and secrete himself that he could not be found to be apprehended; as by such warrant and return now produced appears. Therefore, on motion of B. R., of counsel for the said complainant, it is ordered that a commission of sequestration do issue, directed to W. S., I. L., and O. H. H., commissioners, to sequester the said defendant's personal estate, and the rents, issues and profits of his real estate, until such defendant shall appear to the bill of complaint of such complainant, clear his contempt, and this court shall make other order to the contrary.

[Hand's Sol. Ass., 39. *Pope v. Ward*, 1 Cox, 194. Seaton's Forms of Decrees, &c. *Treadwell v. Morrill*, in Ch., N. Y. 1829, cited in the text.]

Note.—See the order in *Lovett v. Rogers*, remarked upon in the text, post, No. 145.

No. 57.—Page 145.

SEQUESTRATION.

(L. S.) The people of the state of New-York—

To A. M., B. C. and L. R., greeting: Whereas J. K. and M. E. K. lately exhibited their bill of complaint in our court of chancery against I. T. and others, defendants. And whereas the said I. T. being duly served with a writ issuing out of our said court, commanding him, under the penalty therein mentioned, to appear to and answer the said bill, hath refused so to do, and thereupon all process of contempt hath issued against him unto a sergeant at arms. And whereas the said I. T. hath of late absconded and so concealed himself that the sheriff of the city and county of New-York, attending this court at the present (or *the late October*) term thereof, and executing all the powers and duties of a sergeant at arms, hath not been able to find him, as by the certificate of the said sheriff appears: Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give, to you, any three or two of you, full power and authority to enter upon all the messuages, lands, tenements and real estate whatsoever, of the said I. T., and to take, collect, receive, and sequester into your hands, not only all the rents and profits of the said messuages, lands, tenements and real estate, but also all his goods, chattels and personal estate whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours go to, and enter upon, all the messuages, lands, tenements and real estate of the said I. T., and that you do collect, take, and get into your hands, not only the rents and profits of all his said real estates, but also all his goods, chattels and personal estate, and detain and keep the same under sequestration in your hands, until the said I. T. shall fully answer the complainant's bill, clear his contempts, and our said court make other order to the contrary.

B. R., Sol.

J. W., Assistant Register.

No. 58.—Page 152.

ORDER FOR TENANTS TO ATTORN.

(Title.)

At, &c.

It appearing to this court that by an order made in the above cause, wherein the above A. B., &c., are plaintiffs, and J. T., defendant, dated the day of it was ordered that a commission of sequestration should issue, directed, &c. (follow the order,) and that a commission issued accordingly. And it also appearing by the certificate of A. M. and J. B., two of the commissioners named in such commission, that they have applied to T. M., &c., (by name) tenants under the said defendant, or those under whom he claims, to deliver up possession of the premises severally held by them, and to attorn tenants to the said

commissioners, which they have refused to do, it is thereupon, on reading such order, and reading and filing such certificate, and on motion of, &c., ordered, that the several tenants named in such certificate do attorn tenants to the said commissioners of sequestration, and do pay their rents in arrear and growing rents to them.

[*Attorney General v. Corporation of Winchester*, Aug. 4, 1819. *Seaton's Decrees*, 429.]

No. 59.—Page 155.

ORDER FOR EXAMINATION PRO INTERESSE SUO.

(Title.)

At, &c.

It appearing, &c., (as in form, No. 58,) and that a commission issued accordingly. And it also appearing by the certificate of A. M. and J. B., two of the sequestrators named in such commission, that they had taken possession of a certain messuage and premises situate in (a short description of the property) as part of the real estate of the said J. T.; since which E. C. has claimed title to such premises by virtue of a certain deed or conveyance thereof made and executed, as alleged by the said J. T., to the said E. C., and dated the day of and otherwise; and that the said E. C. has brought an ejectment in the supreme court of this state against the said A. M. and J. B., the said sequestrators for recovering the possession of such premises:—thereupon, on reading such order and reading and filing such certificate, (and also an affidavit of the said E. C.) and upon motion of B. R., of counsel for the plaintiffs, and hearing what was alleged by P. B., of counsel for the said E. C., it is ordered that all proceedings on such ejectment be stayed by *an injunction to be issued out of and under the seal of this court.*(1) And it is further ordered, upon the consent of the said E. C., by his counsel, that the said E. C. do come in and be examined *pro interesse suo*, before D. C., one of the masters of this court, touching his title and interest by him claimed in and to the said messuage and premises so sequestrated; and the plaintiffs are to file interrogatories for that purpose within a week before such master, who is hereby authorized to examine the said E. C. upon the same; and if a replication is filed to such examination, then he is also to examine any other persons as witnesses touching such claim. And the said E. C. is also to produce before the master all deeds, documents, and evidences relating to his interest in such premises. And it is further ordered, that the said master do certify whether the said E. C. hath made out a title to the said premises, or any and what interest therein. And that he report with all con-

(1) Order in *Johannes v. Cloughton*, Jacob's Rep. 573. An action of replevin was there stayed against a receiver. The above is framed from the precedent in *Hamlyn v. Ley*, *Seaton*, 413, and *Granslade v. Baker*, 9 *Fowler's Ex. Pr.* 214. If the claim is for goods taken, the form will be altered accordingly.

venient speed, to the end that such further order may be made in the premises as shall be just.

Note.—In the form in Seaton's Decrees, 413, the claim was by a mortgagee. No ejectment can now be brought by a mortgagee, [2 R. S. 412,] and therefore if he was claimant, the clause as to that action would not apply.

No. 60.—Page 164.

ORDER FOR A DISTINGAS.

(Title, No. 13.)

At, &c. (No. 13.)

Upon filing an affidavit of A. B., student at law, whereby it appears that a subpoena for appearance, with the seal of this court impressed thereon, tested on the day of last, and returnable on the day of instant, was served upon A. C., the president of the above named defendants, *The* (title of the corporation) by delivering a copy thereof to him personally, at the same time showing him the original—that such copy was subscribed G. S., solicitor, and inscribed "copy"—that such corporation is located and carries on business in the city of New-York, and the said A. C. resides therein, and upon filing an affidavit of G. S., solicitor for the complainants, whereby it appears that no notice of an appearance on behalf of the said defendants, *The, &c.*, has been received by him, and that he verily believes no appearance has been entered on their behalf—thereupon, on motion of, &c., it is ordered that a writ of distinguishing issue to compel such defendants, *The, &c.*, to appear to the complainant's bill of complaint.

No. 61.—Page 164.

DISTINGAS.

(L. S.) The People, &c., To the sheriff of the county of greeting :

We command you, that you make a distress upon the lands and tenements, goods and chattels, of (*style of the corporation*) within your bailiwick, so as neither the said nor any other person or persons for them, may lay his or their hands thereon, until our court of chancery shall make other order to the contrary ; and in the mean time you are to answer to us for the said goods and chattels, rents and profits of the said lands, so that the said may be compelled to appear before us in our said court of chancery, wheresoever it then shall be, there to answer to us as well touching a contempt which they, it is alleged, have committed against us, as also such other matters as shall be then and there laid to their charge ; and further to perform and abide such order as our said court shall make in this behalf. And hereof fail not, and bring this writ with you.

Witness, &c.

Endorsed.

By the court.—At the suit of A. B., for the want of an appearance, (or answer.)

No. 62.—Page 167.

ALLOWANCE, BY CHANCELLOR OR VICE-CHANCELLOR, OF NE EXEAT AND WRIT.

Let a writ of ne exeat issue in this cause against the defendant A. B., and let such writ be marked in the sum of \$6000: and let an order to that effect be entered.

Order for a Ne Exeat.

(Title.)

At, &c. (ante, No. 13.)

On reading and filing the bill of complaint in this cause, verified by the oath of C. De Forest, one of the said complainants, and also the affidavit of the said C. De F., to the said bill annexed, and also on filing the allocator of T. B., Esq., on the said bill endorsed, and on motion of S. B. Ruggles, solicitor for the said complainants, it is ordered, that one or more writs of *ne exeat respública* issue out of, and under the seal of this court, to be directed to the sheriff of each of the counties in this state, and particularly to the sheriff in whose bailiwick the said Anson Bailey shall first be found, to be served therewith, therein and thereby commanding the said sheriff in whose bailiwick the said Anson Bailey may first be found, to restrain him, the said A. B., from going out of this state without the leave of this court.

[This was the order in *Barton v. Bailey*, mentioned in the text.]

Writ of Ne Exeat.

The People of the State of New-York, by the grace of God, free and independent—To the Sheriff of *the city and county of New-York*, greeting: Whereas it is represented to us in our court of chancery, on the part of W. M., complainant, against A. M., defendant, (amongst other things,) that he, the said defendant, is greatly indebted to the said complainant, and designs quickly to go into other parts beyond this state, (as by oath made on that behalf appears,) which tends to the great prejudice and damage of the said complainant—therefore, in order to prevent this injustice, we do hereby command you, that you do, without delay, cause the said A. M. personally to come before you and give sufficient bail, or security, in the sum of six thousand dollars; that the said A. M. will not go, or attempt to go, into parts beyond this state, without leave of our said court. And in case the said A. M. shall refuse to give such bail or security, then you are to commit him, the said A. M., to prison, there to be kept in safe custody until he shall do it of his own accord. And when you shall have taken such security, you are forthwith to make and return a certificate thereof to us in our said court of chancery, distinctly and plainly, under your hand, together with this writ. Witness, R. H. W., Chancellor of the said state of New-York, the day of &c.

No. 63.—Page 167.

BOND TO SHERIFF ON NE EXEAT.

Know all men by these presents, that we, A. B. as principal, and J. M. and S. P. as his sureties, all of the city of New-York, merchants, are held and firmly bound unto J. S., sheriff of the city and county of New-York, and his assigns, in the penal sum of six thousand dollars, lawful money of the United States of America, to be paid to the said J. S., sheriff as aforesaid, and his assigns; for which payment well and truly to be made, we jointly and severally bind ourselves, and our and each of our heirs, executors, and assigns, firmly by these presents. Sealed, &c.

Whereas in and by a certain writ of *ne exeat respublica*, issuing out of and under the seal of the court of chancery of the people of the state of New-York, it was commanded to the said sheriff, that he should, without delay, cause the said A. B. personally to come before him, and give sufficient bail or security in the sum of six thousand dollars that the said A. B. would not go, or attempt to go, into parts without the said state of New-York, without the leave of the said court. Now the condition of this obligation is such, that if the said A. B. shall go, or depart, or attempt to depart from, or beyond the said state, without the leave of such court, then the said A. B., J. M., and S. P., and each and every of them will pay, or cause to be paid, unto the said J. S., sheriff as aforesaid, and his assigns, the said sum of \$6000, lawful money as aforesaid. But if the said A. B. shall not go, or depart, or attempt to go or depart from, or beyond, the said state, without the leave of this court, then, and in that case, this recognisance shall be void and of no effect; otherwise the same to stand and remain in full force and virtue.

(Note)—Framed from the recognisance, 1 Fowler's Ex. Pr. 208, and the provisions of the writ of *ne exeat*. The course in the exchequer is, to take in the first instance the bail for obeying the decree, which in our practice is taken subsequently.

No. 64.—Page 168.

ORDER FOR DISCHARGE OF NE EXEAT ON SECURITY.

(Title, &c. No. 13.)

At, &c. (No. 13.)

Upon reading and filing a petition of the above named defendant, duly verified, and the affidavit thereto annexed, and also certain affidavits on the part of the complainant, and on motion, &c., &c., it is ordered and adjudged. [See the order fully recited in the next precedent. This was the order in *Bartow v. Bailey*, referred to in the Treatise.]

No. 65.—Page 168.

BOND ON DISCHARGE OF NE EXEAT.

Know all men by these presents, that we, *Anson Bailey* as principal, and as his sureties, are held and firmly bound unto *Robert Bartow*, and and to the survivor of them, in the sum of six thousand dollars lawful money of the United States of America, to be paid to the said *Robert Bartow*, and or to the survivors or survivor of them, and the heirs, executors, and administrators of such survivor; for which payment well and truly to be made, we jointly and severally bind ourselves, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this day of *October*, in the year one thousand eight hundred and The condition of this obligation is such, that whereas the above named *Robert Bartow*, and have filed their bill in the court of chancery in the state of New-York, against the above named *Anson Bailey*, seeking therein, among other things, for a discovery and account from the said *Anson Bailey*, and praying that by the people's writ of ne exeat respublica the said *Anson Bailey* might be restrained from departing without the limits of this state; and whereas such writ has been duly issued out of the said court, under the seal thereof, and duly served upon the said *Anson Bailey*, personally, by the sheriff of the city and county of New-York. And whereas afterward at a court of chancery, holden for the said state of New-York, at the city-hall of the city of New-York, on the day of 18 on the application of the said *Anson Bailey*, and on hearing his petition, and the affidavit thereto annexed, and the affidavits on the part of the complainants, it was ordered and adjudged, that the said *Anson Bailey* be discharged from custody on the said writ of ne exeat respublica, upon his executing, with two or more sufficient sureties, a joint and several bond to the said *Robert Bartow*, and and the survivors or survivor of them, and the heirs, executors, and administrators of such survivor, in the penalty of six thousand dollars, conditioned, that in case a final decree should be duly entered in the said cause against the said *Anson Bailey*, and process thereon should be legally issued against his body, if the said *Anson Bailey*, within sixty days after written notice of the issuing of such last mentioned process, shall have been served upon the said sureties, or their heirs, executors, or administrators, either personally, or by leaving the same at his or their last place or places of residence within this state, should pay the amount then to be due upon the said decree, or surrender himself to the custody of the sheriff of the city and county of New-York, to be arrested upon the said last mentioned process; and whereas, in order to obtain the benefit of the said order, the said *Anson Bailey* as principal, and the said as his sureties have become bound as above—Now, therefore, in case a final decree shall be duly entered in the said cause against the said *Anson Bailey*, and process thereon shall be legally issued against his body, if the said *Anson Bailey*, within sixty days after written notice of the issuing of such last mentioned process shall have been served upon the said sureties, or their heirs, executors, or administrators, either personally or by leaving the same at their last place or places of resi-

as principal, and J. M. and
merchants, are held and
county of New-York, and
lawful money of the
sheriff as aforesaid, and
made, we jointly and sever-
executors, and assigns,

publica, issuing out of and
of the state of New-York,
without delay, cause the
sufficient bail or security in
would not go, or attempt to
about the leave of the said
that if the said A. B. shall
the said state, without the
S. P., and each and every of
S. sheriff as aforesaid, and
aforesaid. But if the said
start from, or beyond, the said
that case, this recognisance
to stand and remain in full

er's Ex. Pr. 206, and the
the endorser is, to take in
each in our practice is taken

IN SECURITY.

At, &c. (No. 13.)
named defendant, duly veri-
ain affidavits on the part of
ered and adjudged. [See
was the order in *Bartow v.*

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within petition,
M. E. K., is
interest in the

(Signed)

dence within the said state of New-York, shall pay the amount then to be due upon the said decree, or surrender himself to the custody of the sheriff of the city and county of New-York, to be arrested upon the said last mentioned process,(1) then this obligation to be void, or else to remain in full force and virtue.

Sealed and delivered }
in the presence of }

[Two sureties were recognised in this case, and each justified in \$6000; and their justification was annexed to the bond.]

No. 66.—Page 172.

PETITION FOR GUARDIAN AD LITEM.

By the infant.
(Title.)

To the Chancellor of the state of New-York.

The petition of I. S., of the city of New-York, respectfully sheweth: That your petitioner is an infant, over the age of fourteen years; to wit, of the age of sixteen years and upwards. That a bill has been filed in this honourable court, (before your honour,) to procure (state substance of the scope and prayer of the bill, and so as to show the interest of the infant.) And your petitioner further shows, that a subpœna was served upon your petitioner, requiring him to appear to and answer such bill returnable on the twelfth day of February last past.

Your petitioner therefore prays, that M. H., a solicitor of this court, residing in the city of New-York, may be appointed the guardian ad litem of your petitioner, to appear and defend the said suit.

And your petitioner will ever pray, &c.

(Note)—I presume that this petition, when by the infant himself, need not be verified.

Consent.

I, M. H., one of the solicitors of this court, residing and practising in the city of New-York, do consent to become guardian ad litem of the above named petitioner, in the above mentioned suit.

New-York, March 3, 1830.

M. H.

Affidavit.

City and county of New-York, ss. W. W., of said city, student at law, being duly sworn, deposeth and saith, that he saw the said T. S., the petitioner in the aforegoing petition named, to him personally known, subscribe the said

(1) See the remarks on this clause, Treatise, p. 166.

petition, and that he also saw M. H., to him personally known, subscribe the consent above written.

Sworn this fifth day of }
 March, 1830, before me, }

By Complainant.

(This can readily be framed from the preceding form, down to the words "last past," stating the facts, however, upon information and belief—then proceed) That such subpoena was signed with the name of John Walworth, assistant register, and that such infant resides in the city of New-York. [And your petitioner further shows, that he is informed and believes, that at the time of serving the said subpoena upon such infant, written notice was given to J. S., the father of such infant, that unless an application was made on his behalf for the appointment of a guardian ad litem, on or before the fourteenth day of March then ensuing, an application would be made to this court on the third Tuesday of March, being the fifteenth of the said month, for the appointment of such guardian.](1) And further your petitioner shows, that no guardian ad litem had been appointed for such infant. And your petitioner, &c.

Dated New-York, March 15th, 1831.

B. R.
 Sol. Comp.

[Usual Jurat, ante, No. 19.]

By a Relative.

(The petition can readily be framed from the last form, with some slight alterations, down to the prayer—then proceed) Your petitioner therefore prays that he(2) (or, that A. B., a solicitor of this court,) may be appointed guardian ad litem of such infant defendant, to appear to and defend such suit. (And your petitioner further shows, that he has no interest in this suit adverse to that of the said infant, and is not connected in business with the solicitor or counsel of the complainant.)

[Usual Jurat, No. 19.]

[If a solicitor is to be appointed, he should make oath of no adverse interest, and no connexion with solicitor of complainant.]

Certificate of Vice-Chancellor or Master endorsed.

I certify that I have examined into the circumstances of the within petition, and find that M. H., proposed as guardian ad litem for the infant M. E. K., is a suitable and proper person to be such guardian, and has no interest in the suit in opposition to the interest of the infant.

Dated

(Signed)

(1) See Treatise, p. 172.

(2) If he is the general guardian of the infant.

ORDER OF COMMITMENT, &c., UPON AN ATTACHMENT FOR WANT OF ANSWER.

(Title—ante, No. 13.)

At, &c. (No. 13.)

It appearing to this court that the defendant being in contempt for not putting in an answer to the bill of complaint in this cause, an attachment issued against him, returnable this day, on which he has been taken (*and has given bail*) as by such attachment, the return of the sheriff of the city and county of New-York thereupon endorsed (*and the bail bond thereto annexed*) appears; and such defendant now appearing in open court, and persisting in his contempt by refusing to answer such bill, and pay the costs hitherto incurred; [*or, and asking time to put in his answer and clear his contempt, and entering his appearance with the register, and consenting that if he do not file his answer and pay the costs within* days from the date hereof process of commitment for his contempt under the seal of this court do issue against him without further notice.] And it being now adjudged by this court that the said defendant J. T. is guilty of the misconduct alleged, in not filing his answer and clearing his contempt, and that such misconduct was calculated to, or actually did, impair, impede, and prejudice the rights or remedies of the complainants above named; it is thereupon, on motion, &c., ordered, that (*such defendant have until the* day of *to put in his answer to the said bill of complaint, and clear his said contempt. And it is further ordered, that upon his making default, on filing an affidavit thereof with the register of this court*) the said defendant do stand committed to the common gaol of the city and county of New-York, or of any other county in which he may be found, until he file his answer and pay the costs of his contempt, now taxed at the sum of and that a warrant issue for that purpose, under the seal of this court, directed to the sheriff of the said city and county, or of any other county of this state. And further, that the bond given by the said defendant upon his arrest being forfeited may, (upon such default,) (1) be prosecuted by the said complainants.

Order on disobedience of last order.

(Title, No. 13.)

At, &c. (No. 13.)

It appearing to this court by the affidavit of B. R., solicitor, &c., that no answer had been filed by the defendant I. T. pursuant to the order in this cause made the day of last, neither hath the said defendant paid the costs of his contempt thereupon, on reading and filing such affidavit, and reading such order, and on motion of, &c., it is ordered that a warrant or mittimus do issue, as directed by such last mentioned order, to the sheriff of the county of, &c.

(1) Rule 38. *Piggott v. Stacia*, cited 1 V. & B. 229, n. a. &c.

Warrant. (See form, No. 45.)

(If time is given, after the recital of the first order, as follows:)

And whereas such time having elapsed, and such answer not being filed, nor costs paid, it was by a further order of this court, dated the day of instant, ordered that a warrant or mittimus do issue, as directed by such above recited order. Therefore we command you, &c.

No. 72.—Page 180.

ORDER FOR A SEQUESTRATION, DEFENDANT IN CUSTODY, AND PERSISTING IN
HIS CONTEMPT.

(Title.)

At, &c. (No. 13.)

Upon reading the writ under the seal of this court, for the commitment of the defendant, I. T., for his contempt in not obeying an order made by this court on the day of last past in the above entitled cause, whereby the said I. T. was ordered to file his answer to the bill of complaint in this cause within days-after service of a copy of such bill, and notice of such order; and upon reading the certificate of the sheriff of the city and county of New-York, that the said I. T. was held by him in his custody by virtue of the said commitment, for his said contempt, and on reading the affidavit of B. R., solicitor for the said complainant, showing that the said I. T. hath not yet obeyed such order, but persisted in his said contempt, it is there-upon, on motion of the said B. R., ordered, that a sequestration, &c., [as in precedent No. 56, ante, varying it from "until he shall," &c., to—"until he file his answer," &c.]

No. 73.—Page 187.

AFFIDAVIT OF SERVICE SUBPENA. [Ante, No. 37.]

ORDER FOR APPEARANCE IN TEN DAYS, OR BILL TO BE TAKEN AS CONFESSED.

(Title, see No. 13.)

On filing an affidavit of A. B., proving the service of the subpoena to appear and answer in this cause, on the defendant C. D. personally, on the day of which subpoena was tested on the day of and proving also that said defendant resides within fifty miles of the office of the [assistant] register of this court, [or, within fifty miles of the office of the clerk of this court, for the second circuit,] and ten days having elapsed since the return day of said subpoena, on motion of E. F., solicitor for the complainant, it is ordered, that said defendant appear in this cause, and cause notice thereof to be served on the complainant's solicitor within ten days from the date of this order, or that the com-

plaintant's bill of complaint which is filed in this cause be taken as confessed by said defendant.

Order pro confesso for want of appearance.

An order having been entered in this cause on the requiring the defendant C. D. to cause his appearance to be entered in this cause, and notice thereof to be served on the complainant's solicitor within ten days from the date of that order, and declaring that in default thereof the complainant's bill of complaint which is filed in this cause might be taken as confessed.—On filing an affidavit of E. F., solicitor for the complainant, from which it appears that said defendant has not caused his appearance to be entered in this cause, as he was required by said order to do, and on motion of said E. F., solicitor for the complainant, it is ordered, that said bill of complaint be, and the same hereby is, taken as confessed by said defendant.

No. 74.—Page 188.

ORDER TO TAKE BILL PRO CONFESSO, WHERE DEFENDANT IS TAKEN ON AN ATTACHMENT.

(Title—ante, No. 13.)

At, &c. (Ante, No. 13.)

An attachment having heretofore issued in this cause against the defendant J. D., for not appearing to the bill of complaint filed herein, returnable on this day of Nov. 1833, upon which attachment the said defendant was bailed, on his executing a bond with two sureties conditioned for his appearance on such return day, and abiding the order of the court. And the said J. D. not having entered his appearance in this suit, as appears by the affidavit of M. H., solicitor for the plaintiff, [or,—and the said J. D., now appearing in open court and refusing to enter his appearance in such suit, and pay the costs incurred by his contempt,] thereupon, on reading and filing such attachment, and the return of the sheriff of the city and county of New-York thereto, with the accompanying bond, and such affidavit of the said M. H., and on motion, &c., it is ordered, that the bill in this cause be, and the same is hereby taken as confessed against the said J. D. (And further, that the bond taken upon such attachment may be prosecuted by the said plaintiff for the costs.)(1)

No. 75.—Page 189.

ORDER TO ANSWER IN FORTY DAYS ON BILL PRO CONFESSO.

(Title—ante, No. 13.)

At, &c. (No. 13.)

The complainants in this cause having received notice of the appearance of

(1) See the Treatise, p. 117, as to this clause.

J. T., a defendant therein, by E. F., his solicitor, on motion of B. R., solicitor for the complainants, it is ordered, that such defendant J. T. put in his answer to the bill of complaint in this cause, and serve a copy thereof on the complainant's solicitor in forty days after service of a copy of said bill, and notice of this order, or that the said bill be taken as confessed by the said defendant J. T.

No. 76.—Page 191.

AFFIDAVIT OF ABSENCE—FOREIGN RESIDENCE, &c.

(Title cause.)

State of New-York, }
 City and County of New-York, } ss. H. L., of the city of New-York, scrivener, being duly sworn, saith, that he is a clerk in the office of M. H., solicitor in the above cause; that a subpoena to appear and answer, issued out of, and under the seal of this court, directed to the said T. W., (and hereto annexed,) was put into deponent's hands to be served before the return day thereof; but that this deponent could not find the said T. W., to serve him therewith; and that he was informed by S. T. S., Esq., counsellor at law, that he knew the said T. W., and that he resided out of this state, to wit, at Wethersfield, in the state of Connecticut.

No. 77.—Page 191.

ORDER FOR APPEARANCE OF NON-RESIDENT DEFENDANT.

(Title, No. 13.)

At, &c. (No. 13.)

It appearing by affidavit, to the satisfaction of this court, that the defendant R. T. resides out of this state, but is a resident of one of the United States, to wit, of the state of Connecticut, (1) on motion of W. J. L., of counsel for the complainant, it is ordered, that the said R. T. cause his appearance to be entered, and notice thereof to be served on the complainant's solicitor within four months from the date of this order; and in case of his appearance, that he cause his answer to the complainant's bill to be filed, and a copy thereof to be served on the complainant's solicitor within forty days after service of a copy of said bill; and in default thereof, said bill of complaint may be taken as confessed by him. And it is further ordered, that within twenty days, the said complainant cause this order to be published in the state paper, and in the

(1) In numerous orders which I have had an opportunity of inspecting, the clause is—"but within the United States, or some one of the territories thereof, or in one of the provinces of Canada;" not specifying the place of residence. It seems to me that is too indefinite. An affidavit in that form would not, I presume, be sufficient.

Albany Daily Advertiser, and that the said publication be continued in each of the said papers, at least once in each week, for eight weeks in succession, or that he cause a copy of this order to be personally served on the said R. T. at least twenty days before the time above prescribed for his appearance.

(Copy.)

JAMES PORTER, Register.

ORDER FOR APPEARANCE—CONCEALED, &c., RESIDENT.

(Title—ante, No. 13.)

At, &c. (No. 13.)

It appearing by affidavit to the satisfaction of this court, that process of subpoena to appear has been issued out of, and under the seal of this court, directed to the defendant T. W., who is a resident of this state, but that such process could not be served on said defendant by reason of his absence from this state, [or—by reason of his concealment within this state, to avoid service of such process for his appearance,] [or—by reason of his continued absence from the place of his residence;] on motion of M. H., Esq., solicitor for the complainant, it is ordered, that the said defendant, T. W., do cause his appearance to be entered, and notice thereof to be served on the complainant's solicitor within three months from the date of this order; and in case of his appearance, that he cause his answer to the complainant's bill to be filed, and a copy thereof to be served on the complainant's solicitor within forty days after service of a copy of said bill; and in default thereof, said bill may be taken as confessed by him. And it is further ordered, that the said complainant, within twenty days, cause this order to be published in the state paper, and in the newspaper entitled "*The New-York American*," printed in the city of New-York, and to be published in each of said papers for eight weeks in succession, and once at least in each of the said weeks; but such publication as aforesaid, shall not be necessary in case the said complainant shall cause a copy of this order to be served personally upon the said defendant T. W., at least twenty days before the time above prescribed for his appearance in this cause.

No. 78.—Page 192.

AFFIDAVIT OF PUBLICATION, AND NO APPEARANCE.

[The affidavit is made by the printer, with a copy of the printed order annexed.]

Affidavit of no appearance.

(Title, No. 13.)

At, &c. (No. 13.)

City and County of New-York, ss. D. S. J., solicitor of the complainants in the above entitled cause, being duly sworn, saith, that he hath not received any notice that an appearance hath been entered in this cause by, or on behalf of the defendant J. T.; and this deponent verily believes that the said defendant J. T. hath not caused his appearance to be entered.

No. 79.—Page 192.

ORDER FOR REFERENCE, AND TO EXAMINE COMPLAINANT.

(Title.)

At a court of chancery, &c.

Upon reading and filing due proof of the publication of an order of this court, dated the requiring the above defendant T. W. to appear, and in case he appeared, to answer the bill within three months from the date of such order, and also an affidavit of D. S. J., solicitor of the complainants, showing that the said T. W. has not appeared; on motion of, &c., it is ordered, that the bill in this cause be taken as confessed by the said T. W.; and it appearing from said bill that the same is filed for the foreclosure or satisfaction of a mortgage, and that the whole amount secured, or intended so to be, is not yet due; on motion of, &c., it is ordered, that it be referred to one of the masters of this court, residing in the county of Albany, to compute the amount actually due to the complainant, and also to ascertain and report the amount secured to be paid by said bond and mortgage, and which remains unpaid, including interest thereon to the date of such report; and also to ascertain and report the situation of the mortgaged premises, and whether in his opinion the same can be sold in parcels without injury to the interest of the parties; and if he shall be of opinion, that a sale of the said premises in one parcel will be most beneficial to the parties, then that he report his reasons for such opinion; and it is further ordered, that said master also take proof of the facts and circumstances stated in said bill; and he is also hereby directed to examine the complainant on oath as to any payments that may have been made to him, or to any person for his use, on account of the debt secured by said bond and mortgage, and which ought to be credited; and said master is required to report such proofs to the court, and also to report upon the other matters hereby referred to him with all convenient speed.

(Copy.)

JAMES PORTER, Register.

[This is the proper order where there are no defendants but those against whom the bill is taken as confessed by advertisement under the statute. Where there are others, the cause must be brought to a hearing.]

No. 80.—Page 194.

ORDER FOR A FOREIGN CORPORATION TO APPEAR.

(Title, No. 13.)

At, &c. (No. 13.)

Upon reading and filing an affidavit of W. C. setting forth that process of subpoena was duly issued in the above cause, directed to the above named defendants, the President, Directors and Company of the Jersey Bank, with the other defendants in this cause, tested on the 15th day of February last, and returnable on the 29th of said month; that he had made diligent search intermediate the tests and return of such subpoena, for the said defendants, to serve such subpoena upon them, but that he was unable to serve the same upon them,

as he could not find any person upon whom service could be made ; that he was informed and believes that the said the President, Directors, and Company of the Jersey Bank is a corporation heretofore established, and doing business in the state of New-Jersey, but have now no office, place of business, or directors, or officers acting as such ; thereupon, on motion of, &c., it is ordered, that the said, the President, Directors and Company of the Jersey Bank, do cause their appearance to be entered, &c.

[As in form No. 77, omitting the clause as to personal service.]

No. 81.—Page 195.

FORMS ON DISMISSING BILL FOR WANT OF SERVICE.

Order that complainant serve the bill.

(Title, No. 13.)

At, &c. (No. 13.)

The appearance of the defendant J. T. having been entered in this cause, on motion of C. B., his solicitor, it is ordered, that the complainant deliver a copy of the bill of complaint in this cause to the said solicitor of the defendant, within twenty days after service of notice of this order, or that this suit be dismissed.

Affidavit of service.

(Title.)

State of New-York, }
City and county of New-York, } ss. C. D., of the city of New-York, student at law, being duly sworn, saith, that on the day of he served M. H., solicitor for the complainant in the above cause, with a notice, of which the annexed is a true copy, by delivering the same to him personally, in his office. Sworn, &c.

[An affidavit of the solicitor that no copy of the bill has been served should be added.]

Decree of dismissal.

(Title, No. 13.)

At, &c. (No. 13.)

Upon reading and filing an affidavit of C. D., with a copy of a notice annexed, and another affidavit of B. R., from which affidavits it appears that notice of an order entered in this cause on the day of last, requiring the complainant to deliver a copy of the bill in this cause within twenty days, had been duly served upon M. H., solicitor for such complainant, and that no copy of the said bill had been served—thereupon, (on also reading and filing a *notice of this motion*,) it is ordered and decreed, and this court doth order and decree, that this suit be dismissed with costs, to be paid by the complainant, for want of prosecution.

No. 82.—Page 196.

EXCEPTIONS TO BILL FOR IMPERTINENCE AND SCANDAL.

Exceptions taken by M. E., F. R. T., &c., defendants, impleaded with others, to the bill of complaint of W. P. R., complainant, filed against them.

First Exception.—For that the allegation on the third line of the third page of the said bill, in the words following, to wit, “then being, and for a long time before having been, a professed friend of your orators,” is impertinent, and ought to be expunged.

Second Exception.—For that the allegation on the third page after the words “H. E.,” that is to say, “who had patronized him in business, and rendered him considerable services by endorsing his notes, and otherwise befriending him,” is impertinent and ought to be expunged.

Third Exception.—For that the allegations in the said bill, commencing in the sixth line of the third page thereof, with the words following, to wit, “that at the commencement of the said partnership,” and ending on the third line of the fourth page thereof, with the words “discounted at the said bank,” are scandalous and impertinent, and should be expunged.

In all which particulars the said defendants, impleaded as aforesaid, humbly insist, that the complainants said bill of complaint is irrelevant, impertinent, and scandalous—wherefore the said defendants, impleaded as aforesaid, do except thereto, and humbly pray, that the impertinence and scandal of the said bill of complaint, excepted to as aforesaid, may be expunged with costs.

F. B. C., Sol. for Defendants.

J. H., of Counsel.

[*Note.*—Where the matter, as in the first of the above exceptions, is short, scarcely more than an additional specification would be, the setting it forth at length would, no doubt, be sanctioned as an exception to the general form.]

No. 83.—Page 197.

ORDER TO EXPUNGE UPON SUBMISSION TO EXCEPTIONS.

(Title—ante, No. 13.)

At, &c. (Ante, No. 13)

The exceptions for impertinence taken to the answer of the defendant J. T. having been submitted to, as appears by a written notice of such submission this day filed—on motion of, &c., ordered, that the assistant register of this court do expunge the impertinent matter in such answer according to said exceptions and submission. [As to clause for payment of costs, see the next form.]

No. 84.—Page 197.

ORDER TO EXPUNGE SCANDAL OR IMPERTINENCE.

On Report.

(Title—ante, No. 13.)

At, &c. (No. 13.)

The answer of the defendant J. T. in this cause having been reported impertinent by B. C., the master to whom the exceptions for impertinence were referred, in the matters of the first and third of such exceptions, as appears by his report on file in this court, and such report having become absolute against the said defendant, as appears by an affidavit this day filed, it is, on motion, &c., ordered, that the assistant register of this court do expunge the impertinent matter in such answer according to the said report; and further that the said defendant pay to the complainant or his solicitor the costs of the said exceptions and the proceedings thereon, within twenty days after service of a copy of this order and of the taxed bill of costs on him or his solicitor, or that an attachment issue against him.

No. 85.—Page 201.

ORDER FOR SECURITY FOR COSTS.

(Title, No. 13.)

At, &c. (Ante, No. 13.)

On reading and filing the petition of A. B. the defendant in this cause, duly verified by oath, (and on reading and filing the affidavit of C. D. in opposition thereto,) and on hearing counsel thereupon, it is, upon motion of M. S., of counsel for the defendant, ordered, that the said J. K., the plaintiff in this cause, do, within thirty days after service of a copy of this order, give security for the payment of the costs that may be incurred by the defendant A. B. in this suit, by executing a bond to the said A. B., the defendant, in the penalty of (\$250,) together with two(1) sufficient sureties to be approved of by the register of this court,(2) and filed in this office, conditioned to pay on demand all costs that may be awarded to the defendant in this suit, and that such sureties justify if excepted to by the said defendant. And it is further ordered that if such security be not filed within the time aforesaid, the defendant may apply to dismiss the bill without further notice. And it is also ordered that all proceedings in this cause on the part of the plaintiff be stayed until such security be filed.

[Note.—Framed from the statute § 4, and the orders in *Fulton v. Roosevelt*, and *Massey v. Gillelan*, 1 Paige, 187 and 644.]

(1) The statute requires one or more sufficient sureties.

(2) It was the direction in *Massey v. Gillelan*, for the assistant register to approve of the security. So in *Long v. Tardy*. In *Fulton v. Roosevelt*, by a master. In *Gilbert v. Gilbert*, by the register. In *Rathbone v. Eckford's Ex.*, Nov. 1833, by a master.

No. 86.—Page 205.

BOND FOR COSTS.

Know all men by these presents, that we, J. K., of Baltimore, in the state of Maryland, merchant, W. T., of the city of New-York, broker, and W. M., of the same place, merchant, are held and firmly bound unto J. T., of the same place, merchant, in the penal sum of (\$250) lawful money of the state of New-York, for which amount, well and truly to be paid to the said J. T., his executors, administrators and assigns, we jointly and severally bind ourselves, our executors, and administrators, firmly by these presents. . Sealed, &c.

Whereas by an order of the court of chancery of the state of New-York, bearing date the day of instant, made in a suit wherein the above named J. K. is complainant, and the above named I. T. is defendant, it was, upon the petition of the said I. T., ordered, (follow order,) as by such order will more fully appear.

Now the condition of this obligation is such, that if the said I. K. shall well and truly pay, or cause to be paid, to the said J. T. on demand, all costs that may be awarded to the said J. T. in the said above mentioned suit, then this obligation to be void : otherwise to be in full force and virtue. [If several defendants apply, the form will be, "to the said defendants I. T. and J. L. respectively, all such costs as may be awarded to them in the above mentioned suit, then," &c.]

No. 87.—Page 208.

ORDER FOR PRODUCTION OF PAPER BY PLAINTIFF.

(Title, No. 13.)

At, &c. (No. 13.)

Upon reading and filing a petition of the defendant I. T., duly verified, praying for the production and inspection of a certain promissory note therein mentioned, before he shall be compelled to answer the bill in this cause, and on hearing A. B. in support of such petition, and Mr. R. in opposition thereto, it is ordered, that the complainant do within eight days leave with the assistant register of this court the certain promissory note, or instrument in writing, mentioned in his bill, to bear date the day of and alleged therein to have been given by to for assuring the payment of the sum of \$ sixty days after such date; and that the said defendant have fourteen days time to answer such bill after the said note or instrument shall have been so produced. [1 Wilson's Rep., 114.]

No. 88.—Page 215.

DEMURRER.

General demurrer for want of equity.

The demurrer of W. H., defendant, to the bill of complaint of C. M., complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer sheweth, that the said complainant hath not in and by his said bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from or against this defendant; wherefore this defendant demands the judgment of this honourable court, whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

B. R., of counsel.

L. G., Solicitor.

For Multifariousness.

The demurrer of, &c.

This defendant by protestation, &c., doth demur to the said bill, and for cause of demurrer sheweth that it appears by the said bill that the same is exhibited against this defendant, and H. J., T. J., C. J. and T. W., for several and distinct matters and causes, in many whereof, as appears by the said bill, this defendant is not in any manner interested or concerned; by reason of which distinct matters the said plaintiff's said bill is drawn out to a considerable length, and this defendant is compelled to take a copy of the whole thereof, and by joining distinct matters together, which do not depend on each other in the said bill, the pleadings, orders and proceedings will in the progress of the said suit be intricate and prolix, and this defendant be put to unnecessary charges in taking copies of the same, although several parts thereof no way relate to or concern him; for which reason, and for divers other errors appearing in the said bill, this defendant doth demur thereto, and he prays the judgment of this honourable court, whether he shall be compelled to make any further or other answer to the said bill, and he humbly prays to be hence dismissed, with his reasonable costs in this behalf sustained.

No. 89.—Page 221.

PLEA AND ANSWER.

*In Chancery,
Before the Chancellor.*

The joint plea of the Rector, Church Wardens and Vestrymen of Trinity Church, in the city of New-York, William Berrian and William Johnson, defendants, to part, and their joint and several answers to the residue of the bill of complaint of John Bogardus, complainant.

These defendants by protestation, not confessing all or any of the matters and things in the complainant's said bill to be true, in such manner and form as the same are therein stated and alleged, as to all the relief prayed by the said bill, and as to all the discovery thereby prayed, save and except so much thereof as relates to the supposed entry of these defendants, the Rector, Church Wardens and Vestrymen of Trinity Church, in the city of New-York, by that or any other corporate name, into or upon certain pieces or parcels of land formerly called the Dominie's Bowery, in said bill mentioned under and by virtue of the instrument of transport, transfer, or conveyance also mentioned in the said bill, as in said bill alleged; and so much as relates to their (the Rector, Church Wardens and Vestrymen of Trinity Church, in the city of New-York,) being by that or any other corporate name seised or possessed, or holding the said pieces or parcels of land, or any part thereof, or any estate, right, title, or interest in the same, or any part thereof, under or by virtue of the said instrument of transport, transfer, or conveyance in common and undivided with the said complainant, or any of his ancestors, as in said bill alleged.

And so much thereof as relates to their, the R., C. W. & V. of T. C., in the city of New-York, claiming to hold by that or any other corporate name, the said pieces or parcels of land, or any part thereof, or any estate, right, title, or interest therein in common and undivided with the said complainant, or any of his ancestors, or under the said instrument of transport, transfer, or conveyance, or the deed of confirmation in said bill mentioned, as in said bill alleged.

And so much thereof as relates to the alleged receipt by these defendants, the R., C. W. & V. of T. C., in the city of New-York, by that or any other corporate name, of any rents, issues, profits, avails, or proceeds of, or arising out of the said pieces or parcels of land, or any part thereof, in trust for, or to the use of the said complainant, or any of his ancestors, as in said bill alleged. And so much thereof as relates to any seisin of the said complainant, or any of his said ancestors of any estate, interest, or share in common and undivided with the said corporation, of or in the said pieces or parcels of land, or to taking of certain of the explees and profits thereof, by Cornelius, the great grandson of Aneke Bogardus, in the said bill named, as in the said bill alleged.

And so much thereof as relates to the written communication in the said bill stated to have been made by James Duane, John Jay, William Duer, John Rutherford, and James Farquhar, to certain agents of the heirs of the said Aneke Bogardus; and so much thereof as relates to the certified copy of the record of

transport, transfer or conveyance enclosed in the said written communication. And to the authority of the said James Duane, John Jay, William Duer, John Rutherford, and James Farquhar; and also so much thereof as relates to the intent of the said communication—these defendants do plead in bar and say, that her late majesty Anne, then Queen of England, Scotland, France, and Ireland, being in the possession and occupation of all that certain tract or parcel of land then known by the name of the Duke's Farm, King's or Queen's Farm, situate in the city of New-York, referred to in the said bill, and bounded as is therein specified, and of which the lands called the Dominie's Bowery in the said bill mentioned are parcel, and being in receipt of the rents and profits thereof to her own sole and separate use and benefit, did by certain letters patent under the great seal of the then province of New-York, bearing date the twenty-third day of November, in the year of our Lord one thousand seven hundred and five, in the said bill referred to, which said letters patent under the seal aforesaid, bearing date the same day and year last aforesaid, are in the possession of the defendants, the Rector, Church Wardens and Vestrymen of Trinity Church, in the city of New-York, ready to be produced to this honourable court, give, grant, ratify, and confirm unto these defendants, the Rector, &c. of, &c., in, &c., by their then corporate name of the Rector and Inhabitants of the city of New-York, in communion of the church of England, as by law established, and to their successors forever, among other lands therein described, all that said parcel of land then known by the name of the Duke's Farm, King's Farm, or Queen's Farm, together with the hereditaments and appurtenances thereunto belonging and appertaining, excepting and reserving all gold and silver mines, to be had and holden unto them, the Rector and Inhabitants of the city of New-York, in communion, &c., and their successors for ever. To be holden of her said majesty, her heirs and successors in free and common socage, as of her manor in East Greenwich, in the county of Kent, in her said kingdom of England. Yielding and praying therefor yearly and every year unto her said majesty, her heirs and successors, at the said city of New-York, to her collector and receiver-general there, for the time being, in the feast of the nativity of our blessed Saviour, the yearly rent of three shillings of current money, in lieu and instead of all other rents, services, dues, duties, and demands whatsoever.

And these defendants further say, that under and by virtue of the said letters patent, and not otherwise, these defendants, the Rector, Church Wardens and Vestrymen of, &c., in, &c., by their then corporate name therein mentioned, did, on the day of the date of the said letters patent, enter in and upon, and become seized in their demesne as of fee, of the said parcel of land and premises therein called the Duke's Farm, King's Farm, and Queen's Farm, including the said premises in said bill designated by the name of Dominie's Bowery; claiming by force and virtue of the said letters patent, and not otherwise, to be of right sole and exclusive owners of the same, and of every part thereof in fee simple; and as such owners, to be of right entitled so to enter upon and become seized and possessed thereof as aforesaid. And

further, that these defendants, the Rector, &c., of, &c., in, &c., by themselves, under one or other of their corporate names in the said bill mentioned, and those claiming under them, the said last mentioned defendants, from the said day of such their entry as aforesaid, upon the said parcel of land and premises so called the Duke's Farm, King's Farm, or Queen's Farm, continually down to the present time, have been in the uninterrupted, sole, exclusive and actual seizin and possession of the said premises called the Dominie's Bowery, in the said bill mentioned, and every part and parcel thereof, claiming to have and hold the same, as sole and exclusive owners thereof in fee simple; and during the whole of that time have been in the sole and exclusive receipt and enjoyment of the rents, issues, profits, avails and proceeds thereof, and of every part thereof, to their own sole and separate use and benefit; claiming to be of right entitled to receive and enjoy the same, and without having paid over or accounted for to the complainant, or any or either of those persons under whom he by his bill claims to derive title, any part of the said rents, issues, profits, avails or proceeds, and without having ever at any time or in any time, by any of their corporate names aforesaid, or otherwise, held or possessed the said last mentioned premises, or any part or parcel thereof, or any estate, right, title, or interest therein, or any rents, issues, profits, avails or proceeds of, or arising out of the same, or any part thereof, in common and undivided with, or as trustee of the complainant, or of any other person or persons under whom he by his said bill claims to derive title; and without having ever acknowledged or admitted that the said corporation was bound either in law or equity to pay over or account for any part of the said rents, issues, profits, avails or proceeds, to the said complainant, or any person under whom he so claims to derive title, and without having admitted or acknowledged themselves, or by their agents, or otherwise, that the said complainant, or those under whom he so claims to derive title, had any estate, share or interest, claim or demand whatsoever in or to the said last mentioned premises, or any part thereof, or in or to any rents, issues, profits, avails or proceeds of, or arising out of the same. All which matters and things these defendants do aver and plead to so much of the complainant's said bill as is not herein before particularly excepted; and humbly crave whether they shall make any further answer to so much of the said bill as is hereby pleaded to.

And these defendants not waiving their said plea, but relying thereon for answer to the residue of the said bill and in support of their said plea say, that they deny that these defendants, the Rector, Church Wardens and Vestrymen of Trinity Church, in the city of New-York, have ever at any time, by any of their corporate names mentioned in the said bill, entered upon the said premises in the said bill designated by the name of the Dominie's Bowery, or any part or parcel thereof, under the instrument of transport, transfer, or conveyance, mentioned in the said bill, or under any of the children or heirs of Aneke Bogardus therein named, or ever at any time by themselves, or by any agents, claimed to hold, or possess, or derive title to the same, or any part or parcel thereof, under the said instrument of transport, transfer, or conveyance thereof, under any of the said children or heirs, or any deed of confirmation to them, or any of them, as in the said bill is alleged.

And these defendants, further answering, deny, that these defendants, the Rector, &c., of, &c., in, &c., by any or either of their corporate names aforesaid, or otherwise howsoever, became seized, or have ever, at any time, held or possessed the said last mentioned premises, or any part or parts thereof, or any estate, right, title, or interest therein, or any rents, issues, profits, avails, or proceeds of, or arising out of the same, or any part thereof, in common and undivided with, or in trust, or for the use and benefit of the complainant, or any other person or persons being, or claiming, or pretending to be the child or children, heir or heirs, descendant or descendants of the said Aneke Bogardus. And these defendants do expressly deny that these defendants, the Rector, &c., of, &c., in, &c., by and of their corporate names aforesaid, or otherwise howsoever, have ever, at any time, paid over to, or accounted with, the complainant, or those under whom he claims title by the said bill, for any part of the said rents, issues, profits, avails, or proceeds, or ever acknowledged or admitted that they were bound either in law or equity, to pay over or account for any part of the said rents, issues, profits, avails, or proceeds to the said complainant, or any person under whom he so claims title, or ever in any manner admitted or acknowledged that the said complainant, and those under whom he so claims title, had any right, title, estate, or interest whatsoever, in or to any part of the said last mentioned premises, or in or to the said rents, issues, profits, avails, or proceeds, or any part thereof.

And these defendants further answering, deny, that the said complainant, or any of his ancestors, or any descendant of the said Aneke Bogardus, ever entered upon or became seized of any estate, interest or share in common and undivided with these defendants, the Rector, &c., of, &c., in, &c., under any of their corporate names aforesaid, of or in the said last mentioned premises, or any part thereof, or that said Cornelius, the grandson of the said Aneke Bogardus, ever took any of the explees and profits thereof in common with these defendants, the Rector, &c., of, &c., in, &c., under any of their corporate names aforesaid, as in the said bill is alleged.

And these defendants, further answering, say, that they have heard and believe, that James Duane, John Jay, William Duer, John Rutherford, and James Farquhar did at the time, for this purpose mentioned in the said bill, make an original written communication, in the form of a letter, addressed by them to William Malcolm and Jacob Bogardus, as agents for the claimants of Dominie's Hook, under the heirs of Aneke Bogardus. And these defendants do believe and admit, that there was enclosed in the said communication a copy of the record of transport, transfer, or conveyance to Francis Lovelace, set forth in the said bill, and certified as is therein charged, and that the several names of the said James Duane, John Jay, William Duer, John Rutherford, and James Farquhar, were respectively subscribed to the said communication in the proper handwriting of each of them respectively.

And these defendants, further answering, say, that they are ignorant, and unable to answer, whether the said communication was so subscribed by the said James Duane, John Jay, William Duer, John Rutherford and James Farquhar, as a committee of Trinity Church for managing their controversy with the heirs of Aneke Bogardus, as is charged in the said bill, or how other-

wise the same was subscribed; but they believe and admit, that in all other particulars the contents of the said written communication, so far as the same is set forth in the said bill, are therein truly set forth; and that the said communication and enclosed copy of record are in the possession of one of the counsel of certain of the heirs claimants under the said title of the said Aneke Bogardus, as is mentioned in the said bill.

And the defendants, further answering, say, that the said James Duane, John Jay, William Duer, John Rutherford and James Farquhar, were a committee of the Vestry of the said corporation, to defend the rights of the said corporation to a claim to part of the said estate of the said corporation, theretofore called the Duke's Farm, King's Farm, or Queen's Farm, then recently set up by the said William Malcolm and Jacob Bogardus, as such agents, and on behalf of the said heirs; but these defendants have no knowledge or belief that the said James Duane, John Jay, William Duer, John Rutherford and James Farquhar, or either of them, then had any other authority in the premises from the defendants, the Rector, &c., of, &c., in, &c., under that or any other corporate name than such as necessarily resulted from it, was included in their general appointment as such committee; and these defendants submit to this court, whether such general authority authorized the said committee, or either of them, to communicate to the said William Malcolm and Jacob Bogardus, as such agents, the certified copy of the instrument of transport, transfer or conveyance in the said bill alleged to have been enclosed in the said written communication. And these defendants further say, that whether in the said written communication the said committee intended to refer to the one or the other two pieces or parcels of land severally referred to in the said bill by the name of Dominie's Hook, or Dominie's Bowery, they are wholly ignorant and unable to answer; but they do admit that the said committee, when speaking of Dominie's Hook, as having been granted by government to Trinity Church, referred to and intended thereby the settlers' patent and grant of Queen Anne, of the said tract or parcel of land called the Duke's Farm, King's Farm, or Queen's Farm, in the said bill mentioned.

And these defendants, further answering, do deny, that the said James Duane, John Jay, William Duer, John Rutherford and James Farquhar, were in any manner or upon any occasion whatever, ever authorized by these defendants, the Rector, &c., of, &c., in, &c., under or by virtue of their corporate names aforesaid, to claim or set up by way of communication to the agents of the aforesaid claimants or otherwise, that these defendants, the Rector, &c., of, &c., in, &c., under any of their corporate names aforesaid, had or held, or claimed to have or hold, then or at any other time, any part or parcel of the said premises called the Dominie's Bowery, or any right, share, interest or title therein under the instrument of transport, transfer or conveyance, the certified copy of the record whereof was so as aforesaid enclosed in the said communication, or under any of the parties named as grantors in the said instrument. And the defendants do also expressly deny, that by the said communication, or otherwise, the said James Duane, John Jay, William Duer, John Rutherford and James Farquhar, did claim, or intend to claim, that these defendants, the Rector,

&c., of, &c., in, &c., by that or any other of their corporate names, held or possessed any part or parcel of the said last mentioned premises, or any right, share, title or interest therein, under the instrument of transport, transfer or conveyance, or under any of the parties named as grantors in the said instrument.

And these defendants deny all, and all manner of unlawful combination and confederacy, charged in the said bill, and humbly pray to be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.

No. 90.—Page 224.

ORDER FOR PLEA TO STAND FOR AN ANSWER.

(Title—ante, No. 13.)

At, &c. (No. 13.)

The plea of the defendant J. T. to the bill of complaint in this cause, having heretofore come on to be argued before the chancellor, and counsel on both sides having been heard thereupon, it is ordered that the said plea do stand for an answer, with liberty for the plaintiff to except thereto.

No. 91.—Page 224.

ORDER OF REFERENCE OF PLEA OF FORMER SUIT, &c.

(Title.)

At, &c. (See No. 13.)

A plea having been filed in this cause, averring, that there is a former suit depending in this court for the same matters as are involved in the present suit—thereupon, on motion of W. Slosson, solicitor for the defendant A. B., it is ordered, that it be referred to ———, one of the masters of this court, to look into the bill and into the defendant's plea, and the bill in the said plea mentioned to have been exhibited by the plaintiff against the defendant, and the proceedings therein, and to certify whether the said bill formerly exhibited is for the same matters as the complainant's bill in this cause, and whether the same is now depending.

(3 Br. C. C., 544. *Shotwell v. Fox*. W. Slosson, Sol. Rule 48.)

No. 92.—Page 228.

ANSWERS.

Title of.—(Single defendant.)

The answer of A. B., defendant, to the bill of complaint of C. M., complainant.

One of several defendants.

The answer of S. D., one of the defendants to the [original and] amended bill of complaint of H. N., complainant.

Two of several defendants.

The joint and several answer of L. R. and J. T., two of the defendants, to the bill of complaint of B. D. and C. A., complainants.

Joint answer of several Defendants—names of some misstated in bill.

The joint and several answer of M. P., R. P. in the bill called E. P. and J. R., in the bill called A. R. and S. T., defendants to the bill of complaint of M. R., complainant.

Further answers where exceptions taken to former answer and bill amended.

The further answer of T. J., one of the defendants, to the original bill, and her answer to the amended bill of complaint of S. S. and B. R., complainants.

Death of plaintiff before all of defendants have answered, and bill been frequently amended.

The joint and several answer of S. A., C. D., and E. R., three of the defendants to the original and amended bill of complaint of P. N., deceased, and also their answer to the bill of revivor and amended bill of A. D., complainant.

Where adult and infant defendants join in answering.

The joint and several answer of B. J. and M. his wife, H. F., E. F, W. F. and T. P., and of W. P. and J. P., infants under the age of twenty-one years, by ————, their guardian, nine of the defendants to the bill of complaint of G. T. complainant.

Of a supplemental answer.

The supplemental answer of P. T. W., S. G. and T. R., three of the defendants to the bill of complaint of F. W. B. and E. C., complainants.

Commencement.

This defendant now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, saith, &c.

Another form of commencement.

This defendant, reserving to himself all right of exception to the said bill of complaint, for answer thereto, saith, &c.

Where a defendant admits a statement.

And this defendant, further answering, saith, he had been informed, and believes it to be true, that, &c. [or, this defendant admits that, &c.]

Where a defendant believes a statement may be true, but qualifies his admission of it, not knowing the same of his own knowledge.

And this defendant further saith, that he has never heard or been informed, save by the said complainant's bill, whether, &c., but this defendant believes that, &c., as in the said bill is alleged.

When one of two defendants denies the allegations in the bill, and the other defendants believe such denial to be true.

And this defendant R. B., further severally answering, saith, she denies, and this defendant S. T. believes such denial to be true, that the said M. R. S. was then incapable of understanding the said codicil, but saith that he fully knew, &c.

Where a schedule of Deeds is required to be set forth.

And this defendant further saith, he hath in the schedule to his answer annexed or underwritten, and which he prays may be taken as part thereof, set forth according to the best and utmost of his knowledge, remembrance, information and belief, a full, true and particular list or schedule of all deeds, &c., and this defendant is ready to produce and leave the same in the hands of his clerk in court for the usual purposes.

Where an account of Rent, or moneys received or paid, is required to be set forth by several defendants.

And these defendants further severally answering, say, they have in the [first] schedule to this answer, annexed or underwritten, and which they pray may be taken as part thereof, set forth according to the best and utmost of their several and respective knowledge, remembrance, information and belief, a full, true and particular account of all and every sum and sums of moneys, &c., [or, if an account is required as to real estate, thus : "a full, true and just rental and particular, of all and singular, the real estates, &c."]

Where a defendant is entirely ignorant with regard to the statement in the bill.

And this defendant, further answering, says he knows not, and has not been informed, save by the said complainant's said bill, and cannot set forth as to his belief or otherwise, whether the said complainant has or not applied for, or procured letters of administration of the goods, chattels, rights and credits of the said E. B., to be granted to her, by and out of the proper, or any office of probate ; nor whether, &c.

Where one of two defendants, of his own knowledge, knows the statement in the bill to be true, and the other defendant does not know the same, but believes the answer of his co-defendant.

And this defendant B. R., further severally answering, saith, and this defendant C. B. believes it to be true, that the said testator was not, &c.

Answer.(1)*In Chancery.*

The several answer of I. T., one of the defendants, to the bill of complaint of J. K. and M. E. K., complainants, against this defendant, and A. T., I. M., junior, W. D., J. N. and Jane his wife, and J. Taylor, defendants.

This defendant, now and at all times saving and reserving to himself all advantage and benefit of exception to the errors and imperfections contained in the said bill of complaint of the said complainants, for answer thereto, or to so much thereof as he is advised it is material for him to make answer unto, he, answering, admits, that John Turner, junior, formerly of the city of New-York, merchant, at or about the time in that behalf set forth in the complainant's bill of complaint, in the manner therein mentioned, made and published his last will and testament, of the tenor and date to the effect set forth in the said bill of complaint; and afterwards, some time in the year one thousand eight hundred and one, departed this life, leaving the said will in full force, and leaving his wife Christiana and his two children Archibald Turner and Maria E. Turner, both of them then infants, his only children, and heirs at law. That the said Christiana, his widow, also, within a few weeks after his death, departed this life intestate; leaving the said Archibald and Maria his only children and heirs at law.

And this defendant admits, that the said John Turner, junior, at the time of making his said will, and at the time of his death, was seised in fee of a house and lot in Pearl-street, and of eight fifteen parts of a house and lot in William-street, and possessed of a lease for the residue of said house and lot in William-street, which expired on the first day of May last; but whether of any other real estate he doth not know, and which by virtue of his will and the death of the testator and his wife became vested in the said Archibald and Maria, in equal moieties as tenants in common.

And this defendant admits, that the said testator at his death was possessed of considerable personal property, and that this defendant and James Dunlap, since deceased, the executors appointed by his will, shortly after his death duly proved the same, and took out letters testamentary thereon, and jointly acted as such executors until the concerns of the estate were settled and closed, as hereinafter mentioned.

And this defendant admits, that the said Archibald Turner arrived at full age some time in the year 1803, the said Maria being then about six years of age, and that on or about the 5th day of June, in the year 1806, the said Archibald Turner, James Dunlap, who was the brother-in-law of the testator, and this defendant, were appointed guardians of the said Maria, by an order made by the surrogate of the city and county of New-York, and together with John Taylor as their surety, entered into a bond to the said Maria, which was filed

(1) I have not thought it proper to swell this Appendix with a variety of forms of answers. The present was drawn by that eminent counsel Mr. Wm. Slosson, and will be more useful to the student as it was an answer to the bill in precedent No. 2.

with said surrogate, and of which this defendant believes a true copy is set forth in the said bill.

And this defendant, further answering, saith, that the said Archibald Turner, being the only brother of the said Maria, and independent in his circumstances, took on himself solely the charge of the said guardianship; and from the time of said appointment until the said Maria arrived at full age, was her sole acting guardian; and that this defendant never did, in any respect, or on any occasion, either solely or jointly with the said A. T. or J. D., or either of them, act as her guardian, or in any wise intermeddle with or receive her estate, or any part thereof.

And this defendant, further answering, admits, that he and the said James Dunlap, executors of the said John Turner, junior, deceased, in virtue of their character of executors, but not otherwise, upon his death became possessed of his personal estate and effects, and having collected and got in the same as far as they were able, and being desirous to close the concerns thereof, and duly discharge themselves of their trust in that behalf, in or about the month of August, in the year 1807, duly submitted their accounts as such executors, to the said Archibald Turner, who examined and fully approved thereof; and thereupon this defendant and the said James Dunlap divided the said personal estate and effects, into two equal parts, (having kept a separate account of the estate of the said Christiana, who died shortly after her husband,) and as such executors aforesaid, on or about the 20th day of August in that year, transferred and delivered in bonds, mortgages, navy certificate and money, to the said Archibald Turner, including certain advances made to him, and moneys paid for him, prior to that period, property to the amount of \$16,172 85, being his proportion of the said personal estate, and for which he gave a receipt to this defendant and the said James Dunlap, as executors as aforesaid; and this defendant and the said James Dunlap at the same time, as such executors, transferred and delivered to the said Archibald Turner as the sole acting guardian of the said Maria, for her proportion of the said personal estate in bonds, mortgages, and navy certificate and money, the like sum of \$16,172 85, including in that amount certain moneys which they had paid for her account, amounting to \$1405 54, leaving a balance of principal, with arrears of interest, amounting to \$14,767 31, (and not as is erroneously supposed in the said bill of complaint to \$15,468 94,) and for which amount the said Archibald Turner, as the acting guardian of the said Maria, also gave to this defendant and the said James Dunlap, as executors as aforesaid, a receipt acknowledging such transfer and payment.

And this defendant says, that the whole and every part of the moneys and property so received and delivered over to the said Archibald Turner, was received, held, and delivered over by this defendant and the said James Dunlap solely in their character and capacity of executors as aforesaid, and not as guardians to the said Maria, and that this defendant never at any time, after paying and delivering over the said property as aforesaid to the said Archibald Turner, had in his hands, or under his control, any property of any kind or nature belonging to the said Maria.

And this defendant admits, that he and the said James Dunlap, as executors

as aforesaid, at the time of transferring and delivering to the said Archibald Turner the said property, also delivered to him their accounts as such executors, and a book containing an account of the testator's estate, and the respective proportions thereof belonging to him and the said Maria, as far as this defendant recollects ; but for certainty he prays leave to refer thereto. And he saith, that the above was a full statement of the accounts of the said executors, and transfer of all the property in their hands as such executors, and that no further property belonging to the said testator thereafter came to their hands to his knowledge or belief.

And this defendant, further answering, says, that he admits that the said Archibald Turner, who was also a tenant in common with the said Maria, as her acting guardian, received the rents and profits of her proportion of the real and leasehold estates derived from the said testator or otherwise belonging to the said Maria, from and after the first day of May, in the year 1806, until the said Maria, arrived at full age, which he admits was on the 25th day of November, in the said year 1817 ; but whether quarterly, or what the amount thereof was, this defendant is entirely ignorant. And this defendant further says, that during the whole of that time the said Archibald Turner, as acting guardian of his said sister, for whom he professed and appeared to entertain a great affection, supported and educated her in a style and manner befitting a lady of handsome fortune and respectable rank, and expended therein, as this defendant believes, large sums of money, but to what amount he is entirely ignorant.

And this defendant admits that the said James Dunlap departed this life on or about the time mentioned in the said bill of complaint, intestate, leaving three children, James A. Dunlap, (also since deceased and intestate,) William Dunlap, and Jane, since intermarried with the defendant James Neilson ; and that he left a very considerable real and personal estate, but to what amount this defendant is wholly ignorant. That the defendant John Mowatt, junior, administered upon his estate, and that no one hath administered upon the estate of the said James A. Dunlap, deceased.

And this defendant, further answering, says, that the said Archibald Turner, who had married many years before, and settled at Newark, in New-Jersey, and with whom the said Maria lived in his family a very considerable portion of the time, continued in easy and independent circumstances until about the year 1817, when, as this defendant understood and believes, he met with very considerable losses by occasion of endorsements or commitments for the said James and William Dunlap, his cousins.

That the said Maria, shortly before she became of age, applied to this defendant as friend, in relation to the affairs of her brother; and this defendant, although much advanced in years, from the most benevolent motives, immediately devoted his care and attention to her interest. That this defendant made several journeys to Newark ; and the said Archibald, who professed a perfect readiness to do whatever lay in his power for his sister, came to New-York and employed counsel to make the necessary transfers of his property, and at the instance and through the agency of this defendant, the said Archibald executed to the said Maria a deed of his moiety of the said house and lot in Pearl-street valued at ten thousand dollars, and of his four undivided fifteen parts of the

said house and lot in William-street, valued at, as this defendant believes and admits, \$1866 64-100: another deed of his house and lot at Newark, solely owned by him, valued, as this defendant also believes and admits, at five thousand dollars; transferred to her the several bonds and mortgages in that behalf in the said bill of complaint mentioned, amounting to three thousand nine hundred dollars; and a further bond of one Isaac Sayres, the amount whereof he doth not recollect; transferred to her name on the books of the Mutual Insurance Company twenty-two shares, being at par eleven hundred dollars; and also executed to her a bill of sale of his furniture, valued to the best of this defendant's recollection at eleven hundred dollars; all of which together amounted to \$22,966 64, exclusive of the bond of the said Isaac Sayres. And this defendant saith, that the several deeds and transfers aforesaid were made at or about the time the said Maria came of age; that the valuations aforesaid were the result of much inquiry and of the best judgment which this defendant and the said Archibald were able to make, and were intended to be rather under than over the fair valuation of the said property. That the undivided moiety of the said house and lot in Pearl-street was, in this defendant's opinion, clearly worth the said sum of ten thousand dollars; and he has understood and believes, that the said complainants have since been offered \$22,000 for the whole house and lot which they refused to accept. That the said house and lot in William-street hath lately, although real estate hath since become much depressed, been sold for six thousand dollars. That the house and lot at Newark, as the defendant was informed and believes, actually cost the said Archibald considerably more than it was valued at in said deed; that the shares in the Mutual Insurance Company were then, and yet are, very considerably above par; and as to the furniture, this defendant believes the same was worth considerably more than the above estimate thereof: and this defendant verily believes, that the above real property and furniture at that time could have readily been sold for a sum at least equal to the respective valuations above specified.

And this defendant saith, that the several bonds and mortgages so assigned, and the deeds and sundry policies of insurance upon the said property, were left in the hands of the counsel employed to transact the business, and not in this defendant's hands, until he obtained and delivered them to the said Maria as hereafter mentioned, the said deed for the property in New-York, and he believes that for the property in Newark, having been previously recorded at or about the time of the execution thereof.

And he saith that the said Maria, as well after as before she became of age was fully and minutely acquainted with all the said circumstances; that she minutely and fully knew the property conveyed and assigned, the valuation thereof, and repeatedly after she became of age expressed her entire assent thereto, and much gratitude to this defendant for his active and friendly exertions in her behalf.

And the said Maria, after she became of age, repeatedly told this defendant, that she knew he had never received any part of her estate, nor acted as her guardian, and ought not in any wise to be liable, by occasion of the said bond that had been given to her by her guardians; that she was perfectly willing to release him from all such liability, and that she never intended to call on her

brother, and was willing to release him also; but as his wife had not joined in the said conveyances to extinguish her dower, she intended to retain his apparent liability, with a view to induce his said wife to relinquish her right of dower in said property.

And this defendant saith, that the said Maria freely offered to execute to this defendant a full release from all liability, by reason of said bond, if this defendant would prepare one for her to execute, reserving her right to look to her brother, which she only wished to retain for the purpose aforesaid. And this defendant saith, that some time in or about the beginning of June, in the year 1818, this defendant, at the request of the said Maria, called on the counsel with whom the papers aforesaid had been left, and obtained the same, together with a receipt, acknowledging the receipt thereof from the said Archibald Turner, as her acting guardian, which had been prepared with the said papers, and remained with them, and left them with the said Maria for her examination. And also at the same time left with her a release to this defendant, to be executed by her, if she thought proper. That this defendant called the next day, when said Maria carefully compared the said papers one by one with the said receipt, and finding them to correspond therewith, she signed and delivered to this defendant, for the said Archibald Turner, the said receipt, which has since remained in this defendant's possession, and is in the words and to the effect following, &c. And this defendant further says, that the said Maria, at the same time, also executed and delivered to this defendant, under her hand and seal, the said release, which is in the words and to the effect following, &c. As by the said release now in this defendant's possession, and ready to be produced and proven, as this honourable-court shall direct, may more fully appear. And this defendant saith, that the said Maria executed the said release freely and voluntarily, without any persuasion, threat, or inducement of any kind, held out by this defendant to the said Maria, she professing that she did it from a sense of justice, that this defendant might be free from all liability and disquietude by means of said bond, and as he ought not to be liable, never having himself acted in fact as her guardian, nor received any portion of her estate for the default of her brother.

And this defendant expressly and absolutely denies, that he ever held out any threat promise or persuasion, or ever practised any kind of deception, concealment, or improper circumstances whatever, to induce the said Maria to execute the said release; and he says that the said Maria was fully and minutely acquainted with the nature of the papers so delivered to her by this defendant: that they had all of them been executed by the said Archibald Turner with her full knowledge, and at her instance, and that she had frequently conversed with this defendant before the delivery thereof respecting them. And this defendant expressly denies, that the said Maria signed the said release under any ignorance, to the knowledge or belief of his defendant, of her rights, or without opening and examining the said papers. And he denies expressly and fully, that he left the said bundle of papers, or ever left any paper or papers whatever, at any time, with or for the said Maria, as containing or purporting to contain his accounts as guardian, he never having acted as such; which was perfectly known to said Maria. And he fully and

absolutely denies, that he ever stated or alleged on the occasion aforesaid, or on any occasion, that he had faithfully or otherwise performed his trust as guardian, he never having acted as such, or pretended to act. And this defendant, further answering, saith, that the said Maria frequently, after she came of age, and before executing the said release, stated and admitted to this defendant, that she never intended to look to this defendant on the said bond or otherwise, knowing he had never received or intermeddled with her property, and that her brother had solely acted as her guardian, and freely offered to give this defendant a release; and he denies that the said papers were delivered upon any condition or stipulation required or exacted by this defendant, that the said Maria should execute said release, or otherwise discharge this defendant. And indeed any condition would have been idle, as the said Maria knew that said papers had been absolutely executed by her brother, and left with the said counsel for her use; the deeds had been recorded at or about the time of their execution, and she had actually taken possession of the real estate in New-York, and the title to the said property had been irrevocably vested in her. And this defendant doth fully, entirely and absolutely deny, that the execution of the said release by the said Maria was obtained by this defendant by, or by means of any fraud, misrepresentation, concealment, or other improper practice of any nature or kind whatsoever; and although this defendant for the greater satisfaction of this honourable court, hath in manner aforesaid fully answered, as he believes, the injurious charges made against him in the said bill of complaint, yet he doth by no means waive any defence to which he might be, or is entitled by virtue of the said release, and he doth insist and humbly submit, that the said release is a full and entire bar to this suit, and to all the relief sought or prayed for in and by the said complainant's bill of complaint as against this defendant, and he prays all benefit and advantage by means thereof to which he could be entitled by way of plea or otherwise.

And this defendant, further answering, denies, that he ever delivered to the said Maria the notes of Silas Baldwin, in the said bill of complaint mentioned; but for answer in that behalf this defendant says, that some time after the receipt aforesaid had been executed by the said Maria, and as he believes in the month of June or July, in the said year 1818, this defendant was present with the said Maria and Archibald, when the latter delivered to her, himself, three notes of Silas Baldwin, amounting, as this defendant understood, to \$4000, but which were never in the possession, or under the control of this defendant, nor does he know how much thereof has been collected, or whether said Baldwin is or is not insolvent, he being an entire stranger to this defendant.

And this defendant, further answering, saith, that the papers so delivered by him to the said Maria consisted, to the best of his recollection and belief, of those particularly mentioned and described in the said receipt, and he has no recollection or belief that the same consisted of any other papers, and he denies that the same were carelessly thrown together; but, on the contrary, they were accompanied by the receipt aforesaid, specifying and describing the same; but this defendant, further answering, saith, that some time after the month of June and as this defendant believes, during the fall of the year 1818, the said Archibald Turner brought and deposited in the store of this defendant, a port-

folio, containing a large bundle of papers, which he said contained an account of his guardianship, and which he left for safe keeping merely; that this defendant is entirely ignorant except as aforesaid, what papers were contained therein, never having seen the same opened or examined; that some short time thereafter, and before her intermarriage with the said Joseph Kirby, the said Maria called on this defendant, and stated to him, that her brother, the said Archibald, had authorized or requested her to get them of this defendant to be examined, and this defendant supposing her representation to be correct, sent his servant with the said portfolio, which was large, and appeared to contain a great quantity of papers to her, the possession of which he understands and believes she has ever since retained, and though applied to by the said Archibald, has always refused to deliver them to him. That the said Archibald has complained of the circumstance, and has stated the same as a reason why he could not make up an account of his guardianship; the said portfolio containing all his papers and accounts relative thereto.

And this defendant, further answering, saith, that he has been informed, and believes it to be true, that the wife of the said Archibald Turner refused to release her dower in the premises so conveyed to the said Maria; but whether such composition was made as stated in said bill, this defendant is entirely ignorant. Nor does he know what would have been the fair value of the said house and lot at Newark, subject to her life estate, although he believes the same would exceed the amount in that behalf stated in said bill.

And this defendant humbly submits and insists, that he ought not to be liable to account, or for any defalcation or misapplication, if any, of the estate of the said Maria, by her brother, the said Archibald Turner, her acting guardian, but even if such liability did exist, that the same was entirely discharged and released, by virtue of the release aforesaid. And he saith, that he never hath received any benefit or compensation whatever as guardian of the said Maria, nor for his exertions aforesaid in her behalf, all of which were purely gratuitous on his part. And he denies all combination and confederacy charged against him in the said bill of complaint; without that, that any other matter or thing in the said bill of complaint contained, and not herein and hereby well and sufficiently answered unto, confessed, and avoided, traversed, or denied, is true, to his knowledge or belief. All which matters and things this defendant is ready to aver, prove, and maintain, as this honourable court shall direct, and prays to be hence dismissed with his costs and charges in this behalf, most wrongfully sustained.

Answer setting up Statute of Frauds.

And this defendant saith, that by an act of the people of the State of New-York, represented in Senate and Assembly, which took effect on the 1st day of January, 1830,(1) entitled "of fraudulent conveyances and contracts relative to lands," it was, among other things, enacted, that, &c. (*the clause of the statute*

(1) If it should be thought by the pleader necessary to state the time of the passage of the act, it would be "passed the 4th day of December, 1827." 2 R. S. 777, § 2.

which is applicable.) And this defendant insists upon the said statute, and claims the same benefit as if he had pleaded the same.

No. 93.—Page 230.

PETITION AND ORDER FOR WIFE TO ANSWER SEPARATELY.

(See the Petition—ante, No. 68.)

Order.

Upon reading and filing the petition of, &c., praying, (set forth the prayer only,) and on motion of, &c., ordered, that the said E. H., wife of the said J. H., be at liberty to put in her answer to the complainant's bill separate from her said husband J. H.

No. 94.—Page 233.

INFANT'S ANSWER BY GUARDIAN AD LITEM.

*In Chancery,
Before the Chancellor—*

The answer of S. H. P., an infant under the age of twenty-one years, by Murray Hoffman, her guardian *ad litem*, one of the defendants to the original bill of complaint of A. H. and Margaret his wife, and to the bill of revivor of the said A. H. and Margaret his wife, and also to the bill of revivor and supplement of the said Margaret H., T. P., and M. A. P.

This defendant, answering by her said guardian, saith, that she is a stranger to all and singular the matters and things in the said original bill of complaint, bill of revivor, and bill of revivor and supplement contained respectively; that this defendant is an infant under the age of twenty-one years, and claims such interests in the premises as she is entitled to, and submits her interest to the protection of this honourable court. (1)

(If the guardian is not a counsellor, it must be signed by a solicitor and counsel.)

No. 95.—Page 232.

State of New-York, }
City and County of New-York, } ss. Murray Hoffman, the guardian *ad litem*
of the above named infant, was, on this sixteenth day of March, 1832, sworn

(1) Lube's Eq. Plead. 397. 2 Eq. Drafts. 39, 2d ed. Barton's Suit in Equity, p. 115, n. 1. 2 Harr. 401.

before me, that he had read the foregoing answer, and that he is informed and verily believes, that the facts therein stated are true.(1)

No. 96.—Page 234.

ORDER TO TAKE ANSWER WITHOUT OATH.

(Title.)

At, &c. (Ante, No. 13.)

Upon reading and filing the written consent of J. L. Graham, solicitor of the complainants, that the answer of the defendants A. G. and B. A., to the bill of complaint in this cause, be taken without oath, and on motion of J. Lynch, solicitor for the said defendants, it is ordered, that such answer of the said defendants may be put in without oath.

No. 97.—Page 236.

OATH OF INTERPRETER TO ANSWER OF FOREIGNER.

In Chancery.

(Title.)

A. H. P., of the city of New-York, being duly sworn, saith, that he is well acquainted with the French and with the English languages, and that he hath truly and correctly read over and translated to the defendant A. B. the bill filed in this cause. And this deponent further saith, that he hath read over to the defendant the translation in the French language of the English answer of the said defendant, hereto annexed. And this deponent further saith, that the same is a just and true translation of the English into the French language; which said answer is also hereto annexed.

Sworn this, &c.

(1 Fowler's Ex. Pr. 429.)

Jurat to such answer.

The defendant A. B. being a foreigner, and unacquainted with the English

(1) It should be remarked that the ordinary jurat (No. 19) is usually made by the guardian *ad litem*. After full consideration, it appeared to me that, while the present form of the answer is retained, the usual oath could scarcely be properly made. The answer is entitled and runs as to the answer of the infant. The facts stated are, the ignorance of the matters and the nonage of the infant. When the guardian swears, he swears to the truth of the answer of his own knowledge, except as to the matters set forth on his information and belief. There are no matters thus set forth, nor even on information generally. He would seem therefore to swear positively to the whole answer. The above form was adopted by me in a case in which I was guardian. Mr. P. A. Jay uses one substantially the same, and from similar reasons as the above.

language, was on this day of sworn to this answer by the interpretation of A. H. P. (who was sworn truly to interpret the same) and being so sworn did say that the matters contained, &c. (the usual form.)

~ (1 Fowler's Pr. 429.)

No. 98.—Page 237.

CERTIFICATE, &c. OF JUDGE TO ANSWER NON-RESIDENT.

(Engross the jurat, see Appendix, No. 19, on the answer, leaving a blank for the *scilicet*, and instruct the party to have that filled up according to the custom of the state, as also to subscribe the answer.)

I, Edmund Key, an associate judge of the county court of the state of Maryland, for the first judicial district, do certify that the foregoing answer was subscribed and taken before me, by the defendant J. D., on this day of at the town of Annapolis, in the first judicial district of such state.

(Signed.)

This is to certify, that Edmund Key, named in the foregoing certificate, is an associate judge of the county court of the state of Maryland, for the first judicial district; that such court is in existence under the laws of such state, and that the signature of such judge to the foregoing certificate, is in the proper handwriting of such judge. In witness whereof, I, the clerk of such court, have hereto affixed the seal of such court, on this day of

A. B., Clerk. (L. S.)

No. 99.—Page 237.

ORDER AND COMMISSION TO TAKE ANSWER ABROAD.

(Title.)

On reading and filing an affidavit of solicitor for the defendant F. V., whereby it appears that the said defendant hath appeared to the bill of complaint, and now resides in the kingdom of Great Britain, and on motion of Mr. solicitor for the defendant, and upon hearing Mr. solicitor for the plaintiff, [or, upon reading notice of this motion, and an affidavit of the due service thereof upon Mr. solicitor for the plaintiff,] it is ordered, that the said defendant F. V. have a commission to take his answer to Liverpool aforesaid, and that such commission be directed to A. B. and C. D., on the part of such defendant, and C. M. and J. P., on the part of the plaintiff. And it is further ordered, that the said defendant have three months to return such commission.

(Hand's Sol. Ass. 23 and 26.)

Commission.

The People of the State of New-York, by the grace of God free and independent—to James Neilson, postmaster at Manchac, Hugh Alexander, postmaster at Baton Rouge, William H. Barker, of Louisiana, and Frederick Conrad, of Baton Rouge, or any two of them, greeting: Whereas, H. B. and others, have exhibited their original and supplemental bills of complaint before us, in our court of chancery, against J. B., who is impleaded with J. B. and others, and whereas we have by our writ commanded the said J. B. to appear before us in our said court of chancery, at a certain day, to answer to the said bill: Know ye, that we have given unto you, or any three or two of you, full power and authority at such a day and place as you shall think fit to go to the said J. B., if he cannot conveniently come unto you, and take his answer to the said bill, and take his corporal oath, to be administered by you or any three or two of you, to the said answer, the same being read and distinctly written on paper, and when you shall have so taken it, you are to send the same, closed up under your seals or the seal of any three or two of you, unto us, in our said court of chancery, without delay, wheresoever it shall then be, together with this writ. Witness, R. H. W., chancellor of the state of New-York, the twentieth day of October, in the year of our Lord one thousand, &c.

D. S., Solicitor.

J. W., Ass't. Reg'r.

The execution of the within appears } Hugh Alexander, }
by a schedule annexed. } Wm. H. Barker, } Commissioners.

The undersigned hereby certify, that James Neilson, one of the commissioners named within, is deceased, and that Frederick Conrad, the other commissioner, has been duly notified to attend at this meeting, but that the said Conrad is now absent from home.

Hugh Alexander, }
Wm. H. Barker, } Commissioners.

No. 100.—Page 237.

INSTRUCTIONS TO COMMISSIONERS.

In Chancery.

(Title.)

Instructions to the commissioners to take the answer of I. B., one of the defendants.

Any two of the commissioners named in the *dedimus potestatem* or commission, are sufficient for taking the answer and returning the commission. All the commissioners ought to be noticed to attend, and six days notice of the time and place should be given. The commissioner to whom the commission is delivered will direct this to be done.

The commissioners who are to act, and the defendant I. B., being met at the time and place agreed upon, and the answer being produced, one of the commissioners then asks, "have you read or heard this your answer read, and do you

exhibit it as your answer to the bill of complaint in this cause?" If he answer in the affirmative, the oath is then administered to him by one of the commissioners in the following words: "You do swear, (or affirm,) that you have read, (or heard read,) this your answer subscribed by you, and that you know the contents thereof, and that the same is true of your own knowledge, except as to the matters which are therein stated upon your information and belief, and as to those matters you believe it to be true."

The defendant I. B. then signs the answer, and immediately after the commissioners write as follows: "The defendant I. B., on the day of in the year of our Lord one thousand, &c., appeared and answered that he had read the foregoing answer, and signed the same in our presence, and thereupon was sworn, (or affirmed,) before us, that he had read, (or heard read,) the foregoing answer subscribed by him, and that he knew the contents thereof, and that the same was true of his own knowledge, except as to the matters which are therein stated to be on his own information and belief, and as to those matters he believed it to be true."

Let this jurat be signed by the acting commissioners as follows:

A. B., }
J. M. } Commissioners.

The commissioners then endorse on the commission, "the execution of the within appears by the annexed schedule:" which schedule is the answer, jurat, &c.

The signature of any two of them will be sufficient; there will be no harm if more of them act and sign.

The answer thus sworn to is annexed to the commission, and both, together with these instructions, are then enclosed in an envelope, and bound with tape, and the commissioners sign and seal on the envelope, and direct the same to John Walworth, Esq., assistant register of the court of chancery, New-York.

If the commission should not be brought to New-York by one of the commissioners, then it should be confided by one of them to some person coming there, who upon his arrival should come with it to the defendant's solicitor, or the assistant register aforesaid, who will swear him, or take him before a master in chancery in order to have him sworn touching his receiving it from the hands of the commissioners, and of its not having been opened or altered since he received it. *Or, the said commission may be sent by mail, in which case let a receipt be endorsed by the postmaster, that he received it from one of the commissioners.*

DUDLEY SELDEN, Sol. for Def't.

No. 101.—Page 240.

JURAT TO ANSWER OF AN ILLITERATE PERSON.

The defendant A. B., not being able to read or write, C. D., solicitor for the said defendant, was sworn, that he had truly and faithfully read the contents of this answer to the said A. B., and that he appeared perfectly to understand

the same. And the said A. B. was thereupon sworn, that he had heard the said answer subscribed by him with his mark read, and knows the contents thereof, and that the same, &c., (as in the ordinary form, ante, No. 19.)

(Framed from a form settled by Baron Hullock, 1 Young, 376.)

No. 102.—Page 246.

EXCEPTIONS FOR INSUFFICIENCY.

On special interrogatories in bill.

(Title—ante, No. 13.)

Exceptions taken by the complainant to the separate answer of J. T., a defendant to the bill of complaint in this cause.

First Exception.—For that the said defendant hath not, to the best of his knowledge, remembrance, information, and belief, answered and set forth whether, (pursuing the interrogatory verbatim, as in the bill.)(1)

Second Exception.—For that the said defendant hath not in manner aforesaid answered and set forth whether, &c.

In all which particulars the said answer of the said defendant J. T. is imperfect, insufficient and evasive; and the complainant therefore excepts thereto, and prays that the said defendant J. T. may put in a further and better answer to the said bill of complaint.

Second—on the general interrogatory.

First Exception.—For that the said defendant hath not, to the best of his knowledge, remembrance, information and belief, answered the allegations contained in such bill, that the house in Newark therein mentioned is not in fact worth, subject to the life estate of the said L. M. T. therein mentioned, more than one thousand dollars, at the utmost.

No. 103.—Page 247.

ORDER FOR ANSWER ON SUBMISSION TO EXCEPTIONS.

(Title—ante, No. 13.)

At, &c. (No. 13.)

The first and third exceptions for insufficiency taken by the complainant to the answer of the defendant J. T. having been submitted to, as appears by a written notice of such submissions filed in this cause, and the rest of such exceptions having been abandoned, [or, having been disallowed by B. C., the master to whom the same were referred, as appears by his report on file in this court,] on motion, &c., it is ordered, that the said defendant I. T. put in a fur-

(1) Lube on Pleading, 391. Eq. Drafts. 2d ed. vol. 2.

ther answer to the said first and third exceptions within twenty days after notice of this order, and pay the costs of such exceptions, or that the bill be taken as confessed; [or, that an attachment issue against the said defendant.]

No. 104.—Page 247.

ORDER OF REFERENCE OF EXCEPTIONS.

(Title,—ante, No. 13.)

At, &c. (No. 13.)

Exceptions for insufficiency [*impertinence*] having been filed on the eighth instant to the answer of the defendant J. L., and the said defendant not having submitted to answer any of the said exceptions, on motion of, &c., it is ordered, that it be referred to D. C., one of the masters of this court, to look into the bill of complaint, the answer of the said defendant, and such exceptions, and to report whether such exceptions are well taken or not.

No. 105.—Page 248.

REPORT UPON EXCEPTIONS TO ANSWER.

*In Chancery,
Before the Vice-Chancellor.*

John D. L.

v.

George W. M., who is impleaded with R. M., jr. }

To the Chancellor of the State of New-York.

In pursuance and by virtue of an order of this honourable court, made in the above entitled cause on the 22d day of February, 1832, by the vice-chancellor of the third circuit, whereby it is referred to one of the masters of this court, residing in the county of Albany, to look into the complainant's bill of complaint, which is filed in this cause, the answer of the defendant G. W. M. thereto, and the exceptions taken by the complainant to said answer, and report to this court with all convenient speed, whether said exceptions are well taken or not.

I, the subscriber, one of the masters of said court residing in the city of Albany, do respectfully certify and report, that having been charged by the solicitor of the complainant with the execution of said order of reference, I have been attended by the counsel of the respective parties, and have looked into said bill and answer, and the exception taken thereto, and have heard the arguments of the respective counsel in relation to said exceptions; and having duly considered said bill, answer, exceptions, and arguments, do report that the 1st, 2d, 3d, 4th, 5th, 6th and 7th exceptions to said defendant's answer are well taken; and that the 9th, 10th, 11th, 12th, and 13th exceptions are not well

taken ; and in obedience to the 55th rule of this court I do fix the time for the defendant to put in a further answer to the exceptions allowed at twenty days after this my report shall become absolute if not excepted to, or after the final order of the court upon the exceptions to this report, if any are taken.

All which is respectfully submitted.

J. R., Master in Chancery.

Albany, March, 1832.

No. 106.—Page 249.

EXCEPTIONS TO A REPORT UPON EXCEPTIONS.

(Title—ante, No. 13)

Exceptions taken to the report of D. C., one of the masters of this court, bearing date the day of on the part of the complainant.

First Exception—For that the said master hath certified in such report, that the answer of the defendant J. T., was sufficient in the matter of the second exception. Whereas the said master should have certified that the said answer was insufficient therein.

Second exception.—For that, &c., [precisely as in the first exception.]

[*Note.* Care must be taken to make every exception to the answer, as to which the report is to be appealed from, the subject of a distinct exception to the report.]

No. 107.—Page 251.

ORDER FOR FURTHER ANSWER ON REPORT.

(Title. See No. 13.)

At, &c. (No. 13.)

The answer of the defendant J. T. having been reported insufficient in the matters of the second and third exceptions taken thereto, by David Codwise, the master to whom such exceptions were referred, as appears by his report dated the 16th day of October inst., on file in this court ; and such report having become absolute against the said defendant, as appears by an affidavit this day filed of service on the 17th day of October inst., of notice of such report being filed, upon C. B., solicitor of the said defendant J. T.—thereupon, on motion of M. H., solicitor for the complainants, it is ordered that the said defendant J. T. put in a further answer to the matters of the said second and third exceptions, within twenty days after notice of this order, and pay the costs of such exceptions, or that the bill be taken as confessed by him, [or, that an attachment issue against him.]

No. 108.—Page 252.

FORM OF A FURTHER ANSWER AFTER EXCEPTIONS AND AMENDMENTS.

In Chancery.
Before, &c.

The further answer of J. T., defendant in this suit to the original bill of complaint, and his answer to the amendments to such bill.

This defendant saving and reserving to himself the same benefit of exception to the said original and amended bill as by his former answer to such original bill is saved and reserved, for answer thereto, answers and says—(1)

This defendant, in further answer to such original bill, as to the matters to the third exception taken to his former answer, saith that, &c.

And this defendant, in further answer to such original bill, in the matters of the sixth exception taken to his former answer, saith, &c.

And this defendant, for answer to the amendments made to such original bill, saith that, &c.—(usual conclusion.)

No. 109.—Page 252.

ORDER OF REFERENCE SECOND OR THIRD ANSWER.

(Title. No. 13.)

At, &c. (No. 13.)

Exceptions having been heretofore taken to the answer of J. T., a defendant in this cause, and a *second* answer having been put in by the said defendant, and the complainant being advised that the same is insufficient in the matters of the fourth and sixth of such exceptions—on motion of, &c., it is ordered that it be referred to D. C., one of the masters of this court, to look into the bill of complaint, the answers of the said defendant, and the said fourth and sixth exceptions, and to report whether such *second* answer is insufficient in the matters of the said exceptions or not.

No. 110.—Page 254.

ORDER FOR AN ATTACHMENT ON THIRD ANSWER INSUFFICIENT.

(Title.)

At, &c. (Ante, No. 13.)

The defendant J. T. having put in three answers to the bill of complaint of the complainant in this cause, and the third of such answers having been re-

(1) Lube, p. 368. Where the matter of the amendments are distinct from those of the exceptions, I have adopted this form; but they sometimes are connected, and must be answered together.

ported insufficient, as appears by the report of T. B., a master of this court, filed in this cause on the day of last past, and such report having become absolute, which facts appear by an affidavit of B. R., the solicitor of the complainant, on file in this court—on motion of the said B. R. ordered, that an attachment issue against the said defendant J. T.

Order for commitment and examination on Third Answer insufficient.
(Title.) At, &c. (Ante, No. 13.)

The defendant J. T. (as above to the ordering part,) and an attachment having thereupon issued against the said defendant, pursuant to an order of this court, dated the day of last; and the said defendant now appearing, [or, now being brought up upon such attachment,] and this court now adjudging the said defendant J. T. (as in form No. 41,) it is thereupon, on motion of, &c., ordered, that the said defendant J. T. be examined upon interrogatories before the said T. B., master in chancery, to the points wherein his said answer is reported insufficient, and that he do stand committed to the common gaol of the city and county of New-York, until he shall have answered such interrogatories to the satisfaction of the master, and paid the costs incurred by reason of his default, now taxed at the sum of \$ and that a warrant issue for that purpose. And it is further ordered, that the sheriff of such city and county having the said J. T. in custody, do carry the said defendant before the said master at such time, and from time to time, to be examined, as such master shall appoint.

No. 111.—Page 257.

ORDER FOR BILL PRO CONFESSO ON THIRD ANSWER INSUFFICIENT.

(Title. See No. 13.) At, &c. (See No. 13.)

[Pursue form No. 110, (the order for attachment,) to the words "on file in this court," inclusive, *then*] And an attachment having issued against the said J. T., pursuant to an order of this court, and it appearing further by an affidavit of the said B. R., solicitor of the complainant, that the defendant cannot be arrested on such attachment, and has not surrendered himself thereon, although notice of the issuing thereof was served upon his solicitor, on the day of last, [or, and the said defendant having been arrested on such attachment, wholly neglects (or refuses) to answer the interrogatories filed for his examination, as appears by an affidavit of B. R., solicitor for the complainants, and a certificate of B. C., one of the masters of this court, thereupon—on filing such affidavits and certificates,] on motion of, &c., ordered, that the bill in this cause be taken as confessed against the said J. T.

ORDERS TO AMEND A BILL.

(Title. See No. 13.)

At, &c. (See No. 13.)

I. *Before Appearance.*

No appearance having been entered for either of the defendants in the above entitled cause, on motion of Mr. H., solicitor for the complainants, it is ordered, that the said complainants be, and they are hereby authorized to amend their bill filed in this cause, as they shall be advised. [If under the 190th rule, add] Such amendments being merely in addition to, and not inconsistent with, what is contained in the original bill.(1)

II. *After Appearance—before answer, &c.*

The appearance of the several defendants in this cause having been entered, and no answer, plea, or demurrer having been filed on behalf of either of them, on motion of, &c. [See preceding form.]

III. *After answer—before replication.*

The answers of the several defendants having been filed in this cause, and the time for replying to the same not having expired, [and the complainant not requiring a new or further answer,] on motion of, &c., it is ordered, that the complainant may amend his bill as advised, without costs, if no further answer is put in; but if a further answer is put in, then upon payment of the costs of such further answer as it shall be necessary for the defendant to file; and that the plaintiff serve such amendment.(2)

[If a further answer is required, the clause between brackets will be omitted; and instead of "without costs," it will be, "on payment of costs to be taxed." If under the 190th rule, see the first of these forms.]

IV. *After Demurrer.*

The defendant J. T. having demurred to the bill of complaint in this cause for want of parties, [or, having demurred to the bill of complaint, on the ground that the same is multifarious, not going to the equity of the whole bill,] and such demurrer not being noticed for argument, [or, and ten days not having expired from the reception of a copy of such demurrer,] on motion, &c., it is ordered that the complainant may amend his bill as advised, upon payment of costs to be taxed.

V. *After Plea.*

The defendant J. T. having put in a plea to the bill of complaint in this cause, and ten days not having elapsed since the filing of such plea, on motion, &c., [as in the next preceding form.]

(1) Note of Chancellor Walworth.

(2) This is the substitute of the clause in the English order "amending the defendant's copy." See rule 43, and the Treatise, ante, p. 292.

VI. *On demurres or plea overruled.*

The plea (or demurrer) of the defendant J. T. to the bill of complaint having been overruled, on motion, &c., [as in I., "without costs."]

VII. *On submission to exceptions—or report.*

The bill in this cause not being sworn to, and the answer of the defendant J. T. having been excepted to, and the said defendant submitting to answer further to the first and third exceptions, as appears by his written notice of submission, filed in this cause, [or, the answer of, &c., having been found insufficient by D. C., the master to whom the same was referred, and the report of such master having become confirmed,] it is, on motion of, &c., ordered, that the complainant may amend his bill as advised, and that the said defendant answer the exceptions so submitted to, [or, the exceptions so allowed,] and the amendments together, and that he answer the same within forty days from the service of such amendments.

No. 113.—Page 286.

PETITION TO WITHDRAW REPLICATION AND AMEND.

In Chancery.

Between G. I., Plaintiff,
and

R. B. and others, Defendants.

To the Chancellor of the state of New-York.

The petition of the plaintiff sheweth, that your petitioner having filed his bill in this honourable court against the above named defendant and others, they appeared and put in their answer thereto, to which your petitioner hath replied, but no witnesses have been examined on either side; that your petitioner is since advised to amend his bill by adding to the statements thereof as follows; that, &c.

And your petitioner further shows, that he had no knowledge or information of the fact of, &c., until, &c.

Your petitioner therefore prays your honour, that he may be at liberty to withdraw his replication, and amend his bill by adding parties defendants, or otherwise, as he shall be advised, on payment of costs. And your petitioner shall ever pray, &c.

No. 114.—Page 288.

ORDER TO AMEND ON REPORT OF INSUFFICIENCY.

See No. 112, VII.

No. 115.—Page 292.

DRAFT AMENDMENTS.

- (Title. No. 13.) Proposed amendments to bill.
- 1st.—At page 9, on line 7, after the word “individually,” add, “and as far as regarded his own acts as one of the said guardians.”
- 2d.—At page 10, line 13, after the word “them,” add, “and both your orator and oratrix,” &c.
- 5th.—And such interrogatories as shall be pertinent to the matters of such amendments.

B. R., Sol.

Richard Harison, Counsel.

[*Note.*—The above was the form of certain proposed amendments in the case of *Kirby v. Taylor*, drawn up by and in the handwriting of Mr. Harison. It will be a sufficient form in other cases. See as to the propriety of having the draft signed by counsel, *Treatise*, p. 305.]

Copy to be served.

- (Title.) Amendments made to the bill of complaint in this cause, pursuant to an order entered therein on the day of instant.

1st.—At page 9, line 7 of the bill, the words, “And as far as regarded his own acts as one of the said guardians,” interlined after the word “individually.”

2d.—Amendment A, annexed to the bill on file, and to be inserted after the word “them,” on the thirteenth line of page 10th. And both your orator and oratrix, &c. [The amendment at length.]

3d.—The words, “and Jane D.,” in the line of the page stricken through with a pen. B. R., Sol. Compl’t:

Endorsed with the title of the cause—“copy amendments.” I presume a notice would not be taxable.

No. 116.—Page 306.

ORDER FOR PRODUCTION OF PAPERS BEFORE HEARING.

- (Title, No. 13.) At, &c. (No. 13.)

On reading and filing the petition of the above complainants, verified by the affirmation of I. F., one of said complainants, setting forth, among other things, that it is necessary, for the purpose of examining the witnesses in this cause, to have access to the books and papers of the late A. S. H., and that the said books and papers are now in the possession of M. H., one of the masters of this honourable court, in pursuance of an order made by this court, and also on reading notice of presenting said petition and admission of due service thereof, and on mo-

tion of Mr. E. in behalf of D. S., solicitor for said complainants, it is ordered that the said M. H. be authorized to allow the books and papers in his possession of the late A. S. H. to be examined by the solicitors and counsel for the respective parties in this cause, and also by those who may be called upon as witnesses to testify in said cause; and it is further ordered, that the said books and papers, be not removed from the possession of said master by order of this honourable court until the proofs be closed in this cause, without the consent of the solicitor of said petitioners.

Another Order.

On motion, &c., ordered, that the defendant do, within three weeks, leave with the assistant register of this court, the several books of account, accounts, letters, and papers, relating to the matters in this cause, admitted by his answer to be in his possession; and the complainant, his solicitor, agent, or counsel, is to be at liberty to inspect and peruse the same, and to take copies thereof, or extracts therefrom, as he may be advised, at his own expense; but the said defendant is to be at liberty to seal upon oath such parts of the said several books, &c., as do not in any manner relate to the matters in controversy in this suit.

[Framed from the order in *Gerard v. Penwick*, 1 Swanst. Rep. 535.]

No. 147.—Page 328.

ORDER TO DISMISS BILL ON PLAINTIFF'S APPLICATION.

(Title—ante, No. 13.)

At, &c. (No. 13.)

The complainant being advised to dismiss his bill in this cause—thereupon, on motion of Mr. _____ solicitor for the said complainant, it is ordered, that the same be dismissed. And it is further ordered, that the complainant pay to the defendants their costs in this cause to be taxed.

No. 118.—Page 342.

ORDER THAT PLAINTIFF ELECT—AND ELECTION.

(Title—ante, No. 13.)

At, &c. (No. 13.)

It appearing that the complainant prosecutes the defendant both at law and in this court for one and the same matter, whereby he is doubly vexed—thereupon, on motion of, &c., it is ordered, that the complainant, within eight days after notice of this order, elect whether he will proceed at law in the suit brought by him against the defendant, or in this court upon his bill; and if he elects to proceed at law, or if he neglects to file such election within the said eight days, the bill in this cause shall thereupon stand dismissed with costs, and if he elects to proceed here, it is then further ordered that he proceed as

further in the said suit at law, without leave of this court. (And in such case an injunction may issue to stay such proceedings.)

Note.—Framed from the order in Hand's Sol. Ass. p. 55. 2 Turner & Venables, 129. 2 Fowler's Ex. Pr. 403. *Rogers v. Vosburgh*, 4 Johns. C. R. 84. The clause as to an injunction is in the English forms, but not in *Rogers v. Vosburgh*.)

Election.

(Title.)

In pursuance of an order of this court made in this cause, and dated the day of the plaintiff doth hereby make his election to proceed in this court.

Dated,

C. R., Sol. Comp.

No. 119.—Page 348.

CROSS-BILL—AFFIDAVIT, AND CERTIFICATE.

[For a precedent of a cross-bill, I have selected that in *Buloid v. White*, where the chancellor has decided that it was a fitting case for such a bill,(1) though the form of the bill has not yet been passed upon. But it is impossible to understand the frame of the cross-bill without a brief statement of the nature of the original suit, which is therefore subjoined.]

The original bill was filed by Lydia White, stepmother of Isabella Buloid, and widow and executrix of Charles White. It set forth an ante-nuptial contract between her and her late husband—that this ante-nuptial contract recited that the complainant, L. W., was seized of a house in New-York, and other property in Dutchess county, described therein; that upon the marriage C. W. had agreed that he would not intermeddle with such property, but that it should remain and be to the said Lydia, or to such uses as she should appoint; that C. W. covenanted therein that all the rents of the property should be taken as separate and distinct estate, and be money liable to the payment of his debts; that she should have power to sell and dispose of the said property as she thought fit, in her lifetime, or by her last will and testament. There were other clauses, empowering Wm. George, the trustee, to commence suits in the names of husband and wife, &c.

The bill then stated that C. W. the husband, had in his lifetime sold the lands in Dutchess county, comprised in the settlement; that a part of the purchase money was paid to him, and for the residue he took securities in his own name, which he afterwards collected, and that she was ignorant of the amount, but that it exceeded \$15,000. That he also received a large sum from the *rents and profits* of her real estate; that George, the trustee, united with the said C. W. and the complainant in the conveyance of one of the farms in Dutchess county, the purchase money of which was \$10,000; that the moneys so received were applied to his own use, and no part converted for the

(1) 2 Paige, 167.

benefit of the complainant, unless some portion of the same should be considered as invested in the mortgaged property after mentioned.

That she had never disposed of her separate estate in the presence of two or more credible witnesses, pursuant to the provisions of the ante-nuptial contract, and that what was received by the said C. W. was received without authority, and in breach of his covenants; and she claimed to be a creditor of his estate to an amount exceeding \$12,000, and that the whole of the estate was insufficient to pay the debts and her just and equitable demands.

The bill then stated a purchase by C. W., of a house and lot in New-York, and the execution of a mortgage by him to Robert M. Steel, to secure \$2600, part of the purchase money. It charged that the portion of the purchase money paid by C. W. was paid out of the avails of her estate, and that the buildings erected upon the ground were paid for out of the same funds. That C. W. was at his death seized of a certain other lot of ground in Bedlow-street in New-York, subject to a mortgage to C. W. King; that King had assigned it to one J. Cox, and that he had filed bill of foreclosure and sale under which a decree was made and the property sold.

The bill then set forth the will of C. W., by which the complainant was given a life interest in all his real and personal estate, and after her death he gave one seventh to his sister M. C., and six sevenths to Isabella S. his daughter, and Thomas and Charles his sons, and he made the complainant and his said daughter and J. C. his executrixes and executor.

It stated that she proved the will, and that the others renounced. It then stated the death of Robert S., husband of Isabella, his will, and appointment of Isabella S., G. Lovett, and C. Grim, his executrix, &c. That Isabella S. and G. L., as surviving executors of this will, had filed a bill to foreclose the mortgage given by C. W. to R. M. S. as before mentioned, against the complainant C. L. W., Thomas W. and Mary C., the devisees of C. W. That a decree had been obtained, and the premises sold for \$9800. That after satisfying the amount due and costs, there remained the sum of \$4481 24, surplus, deposited with the clerk of the court.

It stated that C. W. had left very little personal property, and not enough for payment of his debts, exclusive of those due to the complainant, and that the whole of his real and personal estate was insufficient to pay his debts. That Isabella S. had married with Robert Buloid. The bill prayed that the moneys deposited with the clerk might be paid to the complainant, that all the estate real and personal of the said C. W. might be converted into money and sold, and paid to the complainant in satisfaction of her demands, and for general relief.

The cross bill was as follows :

To, &c.,

Humbly complaining, show unto your honour, your orator and oratrix, R. B. and Isabella his wife, that your said oratrix is the daughter of Charles White, late of the city of New-York, mariner, deceased, by a wife deceased previous to his intermarriage with his present widow, Lydia White—that said C. W. in his lifetime intermarried with said Lydia some time in the summer of 1799, your said oratrix being then about twelve years of age—that your said oratrix

in about four years afterwards intermarried with Robert M. Steel, late of said city, merchant, deceased, whose widow she was when she married your orator R. B., of said city, in April, 1826. That said C. W. in his lifetime had but two other children by the mother of your oratrix aforesaid, that is to say—Thomas W. and Samuel W., since deceased before his father. That from about one or two years after the time said C. W. intermarried with Lydia, until they, the said Thomas and Samuel, arrived at the age of twenty-one years, they, the said Thomas and Samuel, resided with another person than their father, earning their own support. And your orator and oratrix charge, that from the time that said C. W. intermarried with said Lydia until his death, he was subjected to very little expense for the maintenance of either of his children by the mother of your said oratrix, except the expense of your said oratrix until her marriage with said Robert M. Steel as aforesaid.

And your orator and oratrix further show unto your honour, that at the time the said C. W. was married to the said Lydia, although he had sustained some losses in business, he was possessed of considerable property, and that subsequent to his said marriage in his lifetime, he kept a dry goods store in the city of New-York, and conducted said business with ability and success.

[The bill then stated the seisin by C. White of a house and lot of ground No. 76 Bowery, subject to a mortgage to R. M. Steel, the foreclosure of such mortgage, sale of the premises, and surplus in court of \$4581 24—an order of court to pay L. White the income, with liberty for any one to apply by bill or otherwise to assert a claim to the principal. It also stated that C. W. was seized of a house in Madison-street, subject to a mortgage which had been foreclosed, and that there remained a surplus after paying the mortgage of \$794 56, which had been paid over to said L. W., and that she had also received \$480, out of certain moneys awarded by the corporation for a part of the mortgaged premises taken on opening Madison-street.] *The bill then proceeded.*

And your orator and oratrix further show unto your honour, that they were made parties to the said suit of the said Jamison Cox, but did not appear thereto, and suffered the bill filed therein to be taken pro confesso against them, the said last mentioned bill disclosing nothing, as they respectively understood, by which it appeared that the said Lydia White was entitled to any more than a life interest in any surplus moneys arising from the sale of said last mentioned mortgaged premises, which might remain, after paying off said last mentioned mortgage, with interest and costs, and they having no objection to make to said last mentioned mortgage, and acting without counsel in the matter.

And your orator and oratrix further show and allege, that they fully believe, and they charge the truth to be, that the said Charles White died as aforesaid possessed of a considerable personal estate, and in amount far exceeding the amount of the debts due by him, excluding the said mortgage debts, and irrespective of the pretended and fictitious claim of the said Lydia White upon his estate hereinafter mentioned. And they allege and charge, that although six months from and after the said time when the said Lydia White took upon herself the burthen of executing the said will of the said C. W., deceased as aforesaid, have long since elapsed, yet that the said Lydia has never made or,

caused to be made, an inventory of the goods, chattels, and credits of said C. W. at the time of his death, and caused the same to be indented and delivered, one part thereof to the surrogate of the city and county of New-York, upon the oath of the said Lydia White, or otherwise, according to the requisitions of the statute, in such case made and provided, as it was the duty of the said Lydia to have done. Nor has the said Lydia ever communicated, or offered to communicate the particulars of the said personal estate, to your orator or oratrix, or either of them: whereby, inasmuch as your said oratrix has never been qualified to act as the executrix of said will of said C. W., neither your orator or oratrix is able to state the amount and particulars of said personal estate: and more especially, since, by reason of said Lydia White having taking upon herself the trust of executing said will of said C. W., as aforesaid, and received letters testamentary from said surrogate for that purpose, all the books, vouchers, papers, and evidences of debt, and all the personal estate belonging to the said C. W. at the time of his death, have passed into the hand of the said Lydia White. And your orator and oratrix allege, that they have no means of ascertaining the particulars and amount of said last mentioned personal estate, except from a discovery thereof, to be made by her, the said Lydia White.

And your orator and oratrix further show unto your honour, that they have understood and believe, and they charge the truth to be, that the said James Cockroft, the former husband of said Lydia, was, in the course of his intermarriage with her, seized in fee in his own right of all the lands and real estate mentioned in the aforesaid paper writing, and was also seized in the course of his said intermarriage with said Lydia, of certain other lands of small value; the location and particulars of which last mentioned lands of small value, your said orator and oratrix have not learned; and in which said other lands the said Lydia, by her said intermarriage with her said first husband, came to have and be entitled to a right of dower: that said Lydia, when she married her said first husband, had none or very little property; and that she never subsequently received or became entitled to any property except from and by means of her said first husband's real estate aforesaid, as hereinafter mentioned. That said first husband of said Lydia was, in the course of his said intermarriage with her, a merchant, in active business as such, in the city of New-York, either alone or in partnership with another or others or both. That a short time before his decease he became insolvent, or was declared a bankrupt, owing a considerably greater amount than all his estate, real and personal: and that a considerable part of his said debts have never been paid or satisfied. That all his real estate aforesaid, either under the former bankrupt law of the United States, or by an order or orders of the surrogates of the respective counties where the same was situated, or by some other process of law, or by private sale, was sold for the payment of his debts, and large sums of money paid or agreed to be paid therefor, on such sales thereof. That all the lands and real estate last aforesaid were purchased or bid in on such sales thereof, by said Charles White, principally, and by another or others of the friends of said Lydia, who paid, advanced or secured the consideration money therefor, and took a deed or deeds therefor in his or their names respectively, or in the name of said

her benefit, subject to the
such sales thereof, or she
money and interest and com-
of the rents thereof, or the
anticipated increased value
might be made by the like
other of said lands of her
of the dower of said Lydia

for honour, that after apply-
and the interest thereupon,
bidding in for the benefit
in said paper writing, and
money therefor on such
purchasing and reselling
husband of said Lydia, or
by part thereof, which came
er of said Lydia's friends
ore or after the marriage of
al estate mentioned in said
g and sealing of the same
nd encumbered with large
nsideration money therefor
said debts of the said first
thereupon, and for making
ur orator and oratrix charge,
parts of said last mentioned
large amounts which were
and remained so until said
divers valid mortgages for
parts of the same premises
for the benefit of the said
and sealing of said paper
with the said Lydia, which
spectively, when said last
sequently to said intermarriage
mortgages for considerable
ere also executed and given
other objects exclusively of
gages last aforesaid were ap-
money and interest, and to
White personally, or to said
nd expended for her benefit;
ecuted, and all the moneys
ded according to the written
Lydia, signed by her in the
orator and oratrix further charge

in particular, that at the time of said intermarriage between said Charles White and said Lydia, said house and lot of land mentioned in said paper writing, and therein stated to be bounded in front by Water-street, and on one side by Maiden-lane, in the city of New-York, was heavily mortgaged and encumbered.

And your orator and oratrix further show unto your honour, that in the course of the said intermarriage of the said Charles White with the said Lydia, he did, and as your orator and oratrix expressly charge the truth to be, with the assent and concurrence, and at the request of the said Lydia and the said William George, take the principal care and management of the said lands and real estate mentioned in said paper writing, and effect sales of some parts of the same which were sold, and join with the said Lydia and said William George, or with said Lydia, in the deeds conveying the said parts of portions thereof which were so sold, and take some mortgages for parts of the purchase moneys thereof in his own name, and received divers sums of money paid on such sales last mentioned, and in satisfaction of such mortgages, and for rents of certain other portions of said premises which were not so sold, and give his receipts for the same. And your orator and oratrix expressly charge, that in the course of the said last mentioned intermarriage, said Charles White did, with the consent and assent, and at the request of said Lydia and said William George, pay and expend a large proportion of the moneys so received by him as last aforesaid, in refunding and repaying the said consideration money given for said lands and real estate mentioned in said paper writing, when the same were sold as aforesaid for the payment of the debts of the said first husband of said Lydia, and the interest thereupon, and in making said compensation for so bidding the same in or purchasing the same for the benefit of said Lydia as aforesaid; and did, with the like concurrence and assent, and at the like request of said Lydia and said William George, pay and expend another considerable proportion of the moneys so received by him as last aforesaid, in paying off and discharging the mortgages aforesaid upon the last mentioned lands and real estate, or parts thereof, existing and unsatisfied at the time of his said marriage with said Lydia as aforesaid, and the interest thereupon, and the aforesaid mortgage in particular, upon said house and lot fronting on Water-street, in the city of New-York, existing at the time of his said marriage with said Lydia, and the interest due thereupon, and in improving said lands and real estate and erecting buildings thereon; and did, with the like concurrence and assent, and at the like request of said Lydia and said William George, pay and expend another considerable proportion of the moneys so received by him as last aforesaid, in the maintenance and education as a physician, in the studies preparatory thereto, of the said James Cockroft, the son of said Lydia, and did, with the like concurrence and assent, and at the like request of said Lydia and said William George, pay and expend some of said moneys so received by him as last aforesaid, in furnishing and supplying to said Lydia many elegancies and enjoyments of living, of which she would otherwise have been deprived.

And your orator and oratrix further charge the truth to be, that of said last mentioned moneys so received by him, the said Charles White, as last aforesaid, he did, in the course of his said married life with said Lydia, with her concurrence

and assent, and at her request, pay over considerable sums to the said William George in his lifetime, (he being now deceased,) and to his executor the said James Cockroft, the son of said Lydia, after the decease of said William George, and did also pay over to the said Lydia personally, other considerable sums thereof, the receipts for which sums so paid over by said Charles White have all passed into the hands of said Lydia as executrix, as aforesaid, of said Charles White, as have all the receipts taken by said Charles White for the payment and expenses aforesaid by him out of the said moneys so received by him, as last aforesaid, so that your oratrix and orator cannot specify more particularly the payments and expenses aforesaid by the said Charles White. And your orator and oratrix further charge that all the moneys received by him, the said Charles White, as last aforesaid, were received by him in consonance with an authority in writing, under the hand and seal of said William George, or of his executor, given to him the said Charles White, to receive the same ; and that all the payments and expenditures aforesaid, by him the said Charles White, out of the moneys received by him as last aforesaid, except such of said payments as were made to said Lydia in person, were made in consonance with a direction or appointment in writing by said Lydia, signed with her hand in the presence of two credible witnesses ; and your orator and oratrix further charge, that said Charles White, during his said marriage with said Lydia, did no act or thing in relation to said lands and real estate mentioned in said paper writing, without the assent and concurrence of said Lydia ; and further, that said paper writing, signed and sealed as aforesaid, was never, in fact, delivered by the said Charles White previous to his said marriage with said Lydia, so as to be a valid and subsisting *ante-nuptial* contract of said Charles White at the time said last mentioned marriage took place. And your orator and oratrix further show and charge, that the labours and services of the said Charles White, in relation to said lands and real estate, during his said marriage with said Lydia, were worth the sum of five hundred dollars a year. And your orator and oratrix further allege and charge, that said payment and expenditures by said Charles White, out of said moneys so received by him, as last aforesaid, including what he was fairly entitled to as a compensation for his services and exertions in relation to said lands and real estate last aforesaid, during his said marriage with said Lydia, considered in the light of an agent, amount to as much as said moneys so received by him as last aforesaid ; and that at the time of his death the said Lydia had no just and equitable claim against him by reason of any act, matter or thing done or omitted by him in relation to said last mentioned lands and real estate, or the rents, interest or income thereof, during his said marriage with said Lydia, to any amount whatsoever. And that after the payment of all the just debts due by said Charles White at the time of his death, and after deducting all just charges for settling his estate, the clear estate left by him at his decease, to be enjoyed and distributed according to the provisions and true intent and meaning of his said will, is of equal and much greater amount than the said sum of money deposited with the clerk of this court as aforesaid, and invested by said clerk as before mentioned. And your orator and oratrix charge, that the value of the said last mentioned lands

and real estate mentioned in said paper writing, remaining unsold at the death of the said Charles White, exceeds thirty thousand dollars.

But now so it is, may it please your honour, that the said Lydia White, combining and confederating with divers other persons how to injure and aggrieve your orator and oratrix in the rights of your oratrix in the premises, which other persons are at present unknown to your orator and oratrix, but whose names when discovered they pray may be inserted herein, and that they may be made parties hereto, with proper and apt words to charge them, not only pretends and alleges that said paper writing, signed and sealed as aforesaid, was duly delivered by the said Charles White, previous to his said marriage with said Lydia, so as to become and be a valid and subsisting ante-nuptial contract of him, the said Charles White, at the time of said last mentioned marriage, the contrary whereof your orators charge to be the truth, though by reason of the lapse of time since the date of said alleged marriage or ante-nuptial contract, and the comparative youth of your said oratrix at that time, they are not aware that they have the power to disprove the said delivery otherwise than by the discovery under oath of her, the said Lydia, and not only pretends [The material allegations of the original bill were then set forth by way of pretence, and with proper charges to the contrary—it then proceeded.]

And the said Lydia hath exhibited her bill in this honourable court against your said oratrix, and against your said orator, as the husband of your said oratrix, and against the other heirs at law and legatees and devisees as aforesaid, of said Charles White, deceased, and said James Crockett, her son, as executor of said William George, deceased setting forth said alleged contract, with the particular boundaries of the lands mentioned therein, and insisting respecting the same as herein before mentioned, and containing in substance the said pretences and allegations of said Lydia herein before mentioned, and containing also the statements herein before made in substance, in relation to said house and lot, known as number seventy-six in the Bowery, in the city of New-York, and setting forth the said will of said Charles White, and that said Lydia, and she alone, has been qualified to act as executrix thereof, and taken upon herself the trust, and setting forth in substance, that said Charles White died seized in fee of said house and lot in Bedlow-street, now Madison-street, subject to said mortgage originally given to Elisha W. King, as aforesaid, and the foreclosure aforesaid of said last mentioned mortgage, and the sale of said last mentioned premises under that foreclosure, but omitting to state what amount of the proceeds of such sale, and from the corporation of the city of New-York, as aforesaid, she has received, after satisfying said last mentioned mortgage with costs of suit, and alleging also that said Charles White was seized as aforesaid, and held both said house and lot in the Bowery, and lot in Madison-street, late Bedlow-street, subject to such mortgages thereupon respectively in trust for her, the said Lydia, the contrary whereof is charged by your orator and oratrix. And omitting to set forth any particulars of the personal estate of which said Charles White died possessed, or of the debts, except such said mortgage debts which he owed at that time, exclusive of such alleged debts due by him to said Lydia. And setting forth the death of said William George, and the appointment of her said son James Crockett, as executor of the

last will of said William George, and his being qualified to act as such, and taking upon himself that trust; and the refusal of his said executor since the death of said George to attend to the rights and interests of said Lydia, undersaid alleged contract, and praying for the decree of this court, that the moneys deposited with the clerk thereof, and by him invested as aforesaid, may be paid over to the said Lydia, and the stock in which the same are invested as aforesaid, may be sold for her benefit, and that all the estate, real and personal, which was held or claimed by said Charles White, deceased, at the time of his death and the proceeds thereof remaining undisposed of, may be converted into money, and paid over to said Lydia in satisfaction of her said alleged demands against the estate of said Charles White, deceased, and that said Lydia may be paid her costs, and for further and other relief. Although said Lydia well knows that in equity and good conscience she is entitled to no such decree of this court, but that for the reasons aforesaid your orator and oratrix aforesaid have no means of defending the same, or of obtaining such relief, as they are justly and equitably entitled to, without the oath and discovery of her, the said Lydia, and no means of proving their said charges and allegation in this behalf, although true, without the aid and assistance of this honourable court. To the end, therefore, that your orator and oratrix may be better enabled to make such defence to the said bill of said Lydia, and establish their said allegations and charges in this behalf, they humbly pray that the said Lydia and her confederates, when discovered, may, on oath, true, full and perfect answer make, &c. [The interrogatory and prayer, as usual.]

No. 120.—Page 365, n.

ORDER TO REVIVE ON DEATH OF SOLE PLAINTIFF—in *Thompson v. Baldwin*.

On reading and filing an affidavit of Peter A. Jay, one of the executors of the above named complainant, who is now deceased, whereby it appears that the said complainant, after issue joined and proofs taken in the above entitled cause, departed this life on or about the 21st August last; that he left a will and appointed the said Peter A. Jay, together with P. W. R. and Eliza Thompson, executors, all of whom have proved the said will and taken on themselves the execution thereof. And on referring to the pleadings or proceedings in this cause, and on motion of Mr. Roosevelt, solicitor for the said complainant in his lifetime, and for such executor since his death, and on hearing the defendant in person in opposition thereto, (the chancellor having taken time to consider thereon,) it is ordered, in pursuance of the statute in such case made and provided, that the names of the said Peter A. Jay, P. W. R. and Eliza Thompson, executors of the last will and testament of the said J. T., deceased, be inserted as complainants in this suit, to the end that such further proceedings may be had in this suit as shall be agreeable to equity, &c.

[*Thompson v. Baldwin*, 1826.]

Order on survival of cause of action. [Under § 106 of statute.]

It being satisfactorily suggested to the court, by the affidavit of J. M., that J. K., one of the complainants, [or defendants,] has died since the bill was filed, and that the cause of action survives to the other complainants, [or, against the other defendants,] it is thereupon, on reading and filing such affidavit, and a notice of this application and affidavit of service thereof upon the solicitors of all the defendants who have appeared, on motion of, &c., ordered, that the suit proceed in favour of [against] the surviving parties.

Note.—The affidavit should state so much of the nature of the suit as to show that the cause of action survives. *Leggett v. Postley*, 2 Paige, 599.

No. 121.—Page 366.

PETITION TO REVIVE BY REPRESENTATIVE'S DECEASED COMPLAINANT.—§ 115.

In Chancery,

To. &c.

Before, &c.

The petition of A. M. and C. D., of the city of New-York, executors of A. L., late of same place, deceased, respectfully sheweth:

That the said A. L. on or about the day of exhibited his bill in this court against F. H. and F. M., stating therein in substance, [state the general object of the bill,] and praying [prayer at length.] That the said F. H. and F. M. appeared and filed their joint and several answer to such bill, and that before any further proceedings were had in such cause the said A. L. departed this life, having first made and published his last will and testament in due form of law, and therein appointed your petitioners the executors thereof, who have proved such will and testament, and taken upon themselves the execution thereof.

And your petitioners are advised that such cause has become abated by the death of the said A. L., and that they are entitled to revive the same as his representatives.

Your petitioners therefore pray that they may be made complainants in the said suit in the place of the said A. L., and that such suit, and the proceedings had therein, may stand revived, and be in the same plight and condition as they were in at the death of the said A. L.

And your petitioners, &c.

No. 122.—Pages 366. 369.

ORDER TO REVIVE ON APPLICATION OF REPRESENTATIVE'S DECEASED COMPLAINANT.—§ 115.

(Title, No. 13.)

At, &c. (No. 13.)

A. B., the complainant [or, one of the complainants] in this cause, having

died since the bill was filed, and having by his last will and testament made J. M. and L. B., of the city of New-York, his executors, as appears by the affidavit of J. M., one of such executors, now read and filed; it is thereupon, on motion in open court of F. C., solicitor for the said J. M. and L. B., and on reading and filing notice of this application, and on affidavit of due service thereof on the solicitors of all the defendants who have appeared, (and on the solicitor of the co-complainants,) ordered, that the said J. M. and L. B., be and they are hereby made complainants in this suit. And the bill not being sworn to, and no answer, plea or demurrer having been filed thereto, it is further ordered that the said J. M. and L. B. be permitted to amend such bill as advised.

[As to amendment see this Treatise, and case cited.]

No. 123.—Page 369.

PETITION AND ORDER TO REVIVE ON APPLICATION OF THE PLAINTIFF.—§ 117.

(The substance of the petition is sufficiently stated in the order.)

Order.

(Title, No. 13.)

At, &c. (No. 13.)

It appearing by the petition of J. T., one of the above named complainants, that L. B., one of the complainants in the bill of complaint, died on or about the day of last past;(1) that J. M. and L. B. are the executors of the last will and testament of the said J. T., and that they have not caused themselves to be made complainants in this cause—thereupon, on reading and filing such petition, and also a notice of this application, and affidavit of the due service thereof upon the said J. M. and L. B., and upon the solicitors of all the defendants in this cause who have appeared, and on motion of, &c., ordered, that this suit and the proceedings therein do stand revived against the said J. M. and J. B., executors as aforesaid, as defendants therein.

No. 124.—Page 370.

PETITION AND ORDER TO REVIVE UPON THE DEATH OF PLAINTIFF ON APPLICATION OF DEFENDANT.

(Title.)

To the Chancellor of the state of New-York.

The petition of B. M., a defendant in the above entitled cause, respectfully sheweth:

That J. K., the sole complainant in the original bill in this cause, departed this life on or about the day of [or, that J. K., one of the complain-

(1) The petition must not be presented until more than eighty days have elapsed from the party's death.

ants in the original bill in this cause, departed this life on or about the day of ,] having, as your petitioner is informed and believes, made his last will and testament, and therein appointed J. D., of the city of New-York, his executor, who proved such will on or about the day of last; that such executor has neglected to make himself complainant in this suit, [and that J. R. and L. P., the surviving co-complainants in such bill with the said J. K., deceased, have neglected [or, upon application have refused,] to proceed against the said representative of the said J. K.]

Your petitioner therefore prays, that the said J. D., executor of the said J. K., may by order of this court be directed to show cause by a certain day to be named in such order, why the said suit should not stand revived in his name, or the bill be dismissed as far as the interests of the said J. D., representative of the said J. R., are concerned.

F. B. C., Sol. and of Counsel.

Signed.

Usual Jurat, ante, No. 19.

Order upon the above petition—p. 370.

(Title, No. 13.)

At, &c. (No. 13.)

Upon reading and filing a petition of B. M., a defendant in this suit, duly verified, and on motion of, &c., ordered, that J. D., executor of J. K., the complainant in the bill in this cause, show cause on the day of next, at the City Hall in the city of New-York, why the said suit should not stand revived in his name, [or, the bill be dismissed as far as the interests of the said J. D., representative of the said J. K., are concerned.] And it is further ordered, that a copy of such petition and of this order be served upon the said J. D., [and also upon the solicitor of the other complainants in this cause.]

Order upon neglect to show cause.—§ 119.

(Title, No. 13.)

At, &c. (No. 13.)

An order having been made in this cause, on the day of last past, whereby J. D., the executor and representative of J. K., complainant in the bill in this cause, was ordered to show cause this day, at the City Hall, in the city of New-York, why, &c. (pursue the first order.) And proof being now made to the court of the reasonable service of a copy of such order, with a copy of the petition on which the same was founded, upon the said J. D., executor as aforesaid, by the affidavit of ——— now filed, showing such service to have been made personally, on the day of last past; and the said J. D. not appearing, [or, appearing by counsel, and showing no cause to the contrary,] it is thereupon, on motion of, &c., ordered, that this suit be, and the same is hereby revived, in the name of the said J. D., as executor of the said J. K., deceased—[or, that the bill in this cause be dismissed.](1)

(1) Costs are left by the statute to the discretion of the court.

No. 125.—Page 370.

PETITION TO REVIVE ON DEATH OF A DEFENDANT.—§ 109, &c.

(Title.) The petition of J. T., the above named complainant, respectfully sheweth—

That your petitioner heretofore exhibited his bill in this court against J. L. and E. his wife, stating in substance [state general objects of bill,] and praying [set forth the prayer.] That said defendants appeared in such suit, [and put in their answer to such bill, to which a replication was filed, and the proofs having been closed, and the cause heard, a decretal order was made, by which it was referred to B. C., one of the masters of this court, to take the several accounts thereby directed.] That some time about the day of the said J. L. died, having duly made his last will and testament, and thereby appointed E. L., his widow, executrix, and W. B., executor, of his said last will, who have duly proven the same, and taken upon themselves the burthen of the execution thereof; and that as such executrix and executor, they have possessed themselves of the personal estate of the said J. L. sufficient to pay his funeral expenses and lawful debts, and to satisfy the demand of your orator, &c. [See the precedent No. 129, for the statement and prayer where the representatives are required to set forth assets:] that the said suit and proceedings having become abated by the death of the said J. L., your petitioner is advised that it is necessary for him to revive the same.

Your petitioner, therefore prays, that such suit may, by an order of this court, be directed to stand revived against the said E. L. and W. B., representatives of the said J. L., deceased, and be in the same plight and condition as they were in at the time of the death of the said J. L. [and that the said E. L. and W. B. may answer the premises, &c. See the form No. 129, where an answer is required from executors.] And for such further or other order in the premises as shall be just.

J. M., Sol.

Signed, J. T.

Jurat—ante, No. 19. [It should be by the complainant.]

 No. 126.—Page 370.

ORDER TO REVIVE ON PETITION UPON DEATH OF DEFENDANT.

See the petition, No. 125.

(Title—ante, No. 13.)

At, &c. (No. 13.)

The petition of the above named complainant, duly verified, being this day (having been on the day of last past,) presented to the court, stating, among other things, in substance, that J. L. and E. his wife, were made parties to the bill in this cause, and appeared thereto, [and filed their answer, and that a decretal order of reference was thereupon made in such cause, on the day

of in the year upon which the master has not yet made his report.] That afterwards, and some time about the day of the said J. L. died, having duly made his last will and testament, and thereby appointed the said E. L., his widow, executrix, and W. B., of the city of New-York, executor of his said will; who have duly proven the same, and taken upon themselves the burthen of the execution thereof—that the said suit and proceedings having become abated by the death of the said J. L., the said plaintiffs are advised it is necessary for them to revive such cause. Thereupon, on reading and filing such petition, and on motion of M. H., of counsel for the complainant, it is ordered, that the said suit, and the proceedings therein, do stand revived against the said E. L. and W. B., executrix and executor as aforesaid, and be in the same plight and condition they were in at the time of the death of the said J. L. And it is further ordered, that the said E. L. and W. B. do appear and answer or disclaim within eighty days after service of a copy of this order upon them. [*If no answer to original bill,*] or the original bill of complaint filed in this cause may be taken as confessed by them, or, an attachment may issue against them, to compel an answer to the original bill in this cause.

If a further answer required.—§ 113, 114.

And it is further ordered, that a copy of the petition herein mentioned shall be annexed to a copy of this order, and be served as aforesaid; and that if the said E. L. and W. B. do not appear, and put in a further answer to the matters to which a further answer is required in such petition, or disclaim, within eighty days after service of a copy of such petition, and of this order, that the said petition, as to the matters to which such further answer is required, may be taken as confessed, (or that an attachment may issue against them to compel a further answer to such matters.)

No. 127.—Page 370.

FINAL ORDER FOR REVIVAL; FOR ENTERING APPEARANCE OF DEFENDANT TO PETITION TO REVIVE; TO TAKE ORIGINAL BILL PRO CONFESSO, &c.

*In Chancery,
Before the Chancellor.*

At, &c. (No. 13.)

J. T. & M. his wife,

v.

E. L. & W. B., executors of
J. L., now deceased, a party to
the original bill.

} By original bill, and petition to revive.

It appearing to this court, that an order was, on the day of last, entered in the cause, wherein the above named J. T. and M. his wife were plaintiffs, and J. L., now deceased, was a defendant, with other defendants, whereby it was ordered, that, &c. [follow the order.] And it now appearing to this court, by the affidavit of F. C., solicitor of the complainant

that a copy of such order was served upon the said W. B., &c., personally, on the day of last; and that the said W. B., &c., executors of the said J. L., hath not appeared and answered or disclaimed in the said suit; and eighty days having elapsed from the service of such order upon the said W. B., thereupon, on motion of, &c., it is ordered, that the said suit do stand absolutely revived, and be in the same plight and condition as it was at the death of the said J. L. And it is further ordered, that the appearance of the said W. B., executor of the said J. L., be entered pursuant to the statute; (and further, that the answer of the said J. L., filed in his lifetime, be deemed the answer of his representative, the said W. B.)

*If no answer by }
deceased party. }*

[As above, "pursuant to the statute," inclusive, then—] And it is further ordered, that the original bill filed against the said J. L. and others be taken as confessed against the said W. B., &c., executors of the said J. L., [or, and it is further ordered, that the said W. B. show cause on the day of next, at the [capitol in the city of Albany,] why attachment should not issue against him to compel an answer to the bill of complaint in the said original cause.](1)

Entry of appearance under the 111th section, on the minutes.

(Title.)

Appearance of W. B., executor of J. L., to the petition to revive in this cause, entered in open court, pursuant to the statute.

J. P., Register.

Order where petition required a further answer.

(Title—see No. 127.)

At, &c. (No. 13.)

It appearing to this court that an order was made on the day of last past, in a cause wherein the above named J. T. and M. his wife were plaintiffs, and J. L., now deceased, was defendant, with others, whereby it was ordered, that—[order No. 126,] and it now appearing by the affidavit of F. C., solicitor of the complainant, that a copy of such order, with a copy of such petition annexed thereto, was served personally on the said ——— on the day of last past; and that the said ———, the representatives of the said J. L., deceased, have not appeared and put in a further answer to the matters as to which such further answer is required in the petition mentioned in the said order of the day of last past, nor disclaimed; and eighty days having elapsed from the service of the said order and petition upon the said ———. Thereupon, on motion of, &c., it is ordered, that the said

(1) Perhaps as the clause that an attachment may issue was inserted by way of notice in the first order, it may be issued forthwith.

suit do stand absolutely revived, and be in the same plight and condition as it was at the death of the said J. L. ; and it is further added, that the appearance of the said ——— be entered, pursuant to the statute, that the answer of the said J. L. filed in his lifetime be deemed the answer of the said representatives, and that the said petition be taken as confessed by the said ——— as to the matters as to which a further answer was required in the petition herein before mentioned.

[Or, that the said ——— show cause on the day of next at the ——— why an attachment should not issue against them to compel a further answer to the matters as to which a further answer was required in the petition herein before mentioned.]

No. 128.—Page 372.

ORDER ABSOLUTE TO REVIVE UNDER STATUTE UPON ANSWERS SUBMITTING.

(Title, No. 13.)

At, &c. (No. 13.)

A petition to revive having been filed in this cause against H. A., J. G., &c., as heirs at law of J. A., deceased, and answers having been put in to such petition by the said defendants, submitting to such revival—thereupon, on reading a notice of this motion, and due proof of service thereof upon the solicitor of the said defendants, and on motion of M. H., of counsel for the complainants, it is ordered, that this cause do stand absolutely revived against the said H. A., J. G., &c., and be in the same plight and condition as it was at the death of the said J. A.

No. 129.—Page 379.

BILLS OF REVIVOR.

Pure bill of revivor—against heir at law of deceased mortgagor.

In Chancery.

Before, &c.

To, &c.

Complaining, show unto your honour, your orator J. B., of the city of New-York, merchant, that on or about the day of last past, your orator filed his bill in this honourable court against L. M., since deceased, and others, stating therein the due execution and acknowledgment by the said L. M. of a certain indenture of mortgage, dated the day of in the year 1829, for securing the payment to your orator of the sum of \$3000, lawful money of the United States, according to the condition of a certain bond or obligation therein mentioned, and which indenture of mortgage comprised a house and lot of ground lying in the ward of the city of New-York ; and further stating, that the said L. M. had made default in the payment of the said sum of money according to the condition of such bond, and thereupon praying [set out

the prayer of the bill] as by such bill on file in this court will on reference appear.

And your orator further shows, that the said L. M., being duly served with process, appeared to the said original bill and put in his answer thereto; and the said cause being at issue, the same came on to be heard on the when the court was pleased to order and decree, &c.

And your orator further shows unto your honour, that some proceedings have been had before the master to whom this cause stands referred, but no report hath yet been made thereon. And further, that on or about the the said late defendant L. M. departed this life, leaving B. D., of (the defendant hereinafter named) his heir at law, and without having devised, or in any manner disposed of, the equity of redemption of and in the said mortgaged premises.

And your orator further shows unto your honour, that the said suit having become abated by the death of the said late defendant, your orator is, as he has been advised, entitled to have the said suit revived against the said B. D. as the heir at law of the said L. M., and to have the said decree and other proceedings had thereon, prosecuted and carried into full effect against the said B. D. in like manner as they could or might have had if the said late defendant had been still living. To the end, therefore, that the said B. D. may show cause, if he can, why the said suit and proceedings, therein should not stand and be revived against him as such heir at law of the said late defendant as aforesaid, and be in the same plight and condition as the same were in at the time of the abatement thereof; and that the said suit and proceedings had therein may stand and be revived accordingly.

May it please your honour to grant unto your orator the people's writ of subpoena to revive issuing out of and under the seal of this honourable court, to be directed to the said B. D., thereby commanding him, by a certain day, and under a certain penalty, to be therein expressed, personally to be and appear before your honour in this honourable court, and then and there to show cause, if he can, why the said suit, and the proceedings therein had, should not stand and be revived against him, and be in the same plight and condition as the same were at the abatement thereof; and further, to stand to and abide such order and decree in the premises, as to your honour shall seem meet.

And your orator will ever pray, &c.

Bill of Revivor requiring an answer to it.

Complainings, shows unto your honour, your orator A. M., of, &c. That some time [state filing of bill, its general object and prayer, and the proceedings in the cause; for which the preceding form will be a sufficient guide.] And your orator further shows, that before any other or further proceedings were had in the said cause, and on or about the day of the said J. T., the defendant, departed this life, having in his lifetime duly made and published his last will and testament in writing, dated on or about the day of and thereby appointed B. R. and C. M. defendants hereinafter named, executors thereof, who since the death of the said testator have duly proved his will before the proper officer, and taken upon themselves the execution

thereof; and under and by virtue of such probate, have possessed themselves of the personal estate of the said testator, sufficient for the payment of his funeral and testamentary expenses and debts, and also to answer every demand of your orator thereon, touching the matters in question in the said cause. And the said suit having become abated by the death of the said J. T., your orator is advised that he is entitled to have the same revived against the said B. R. and C. M., as executors of the said J. T., and restored to the condition in which they were at the time of his death. To the end, therefore, that the said suit and proceedings, so abated as aforesaid, may stand and be revived against the said B. R. and C. M., and be in the same plight and condition in which the same were at the time of the decease of the said testatrix, and that the said B. R. and C. M., may answer the several matters herein before set forth [by way of supplement] and more especially that they may, upon their respective corporal oaths, to the best and utmost of their respective knowledge, remembrance, information, and belief, answer and set forth, whether the said testatrix did not duly make and publish her last will and testament in writing of such date, and to such purport and effect as herein before in that behalf mentioned and set forth, or of some and what date, purport, and effect; and whether the said B. R. and C. M., or one or which of them, did not shortly, and when in particular, after the decease of the said testatrix, duly prove the same with a codicil thereto before the proper officer, and take upon themselves or himself the burthen and execution thereof; and whether they or one and which of them have or hath not, by virtue thereof, possessed themselves or himself of all or some, and what part or parts of the personal estate, goods, chattels and effects of the said testatrix, to a large and what amount in value, and much more, and how much more than sufficient to answer and satisfy the aforesaid claims of your orator thereon, and also the said testatrix's debts, funeral expenses, and legacies, with a large and what surplus; and that the said B. R. and C. M. may admit assets of the said testatrix come to their hands sufficient to answer and satisfy the sum of money due and payable from the said testatrix in her lifetime to your orator for a renewal of the lease in said bill mentioned, or that they may set forth and discover a full and particular account of all and singular the personal estate, goods, chattels and effects of the said testatrix, possessed by or come to the hands of them, the said defendants, or either of them, or of any person or persons, and whom by name by the order, with the privity or for the use of them, or either and which of them, together with the natures, kinds, quantities, qualities, full, true and utmost value thereof, and of every part thereof, and how and in what manner the same personal estate and effects, and every part thereof, have or hath been applied or disposed of, and what part or parts thereof now remain unapplied and undisposed of, or outstanding unpossessed and unreceived.

And that the said suit and proceedings, so abated as aforesaid, may stand and be revived against the said defendants B. R. and C. M., and be in the same plight, state and condition in which the same were at the time of the decease of the said defendant J. T., or that they respectively show cause to the contrary. And that the said B. R. and C. M. may admit assets of the said testa-

trix come to their hands sufficient to answer and satisfy the sum due and payable to your orator, or that an account might be taken by and under the direction and decree of this honourable court of the personal estate and effects of the said testatrix, and of her debts, funeral and testamentary expenses and legacies, and that all usual and proper directions may be given for that purpose. May it please your honour to grant unto your orator the people's writ of subpoena to revive and answer issuing out of and under the seal of this honourable court, to be directed to the said B. R. and C. M., thereby commanding them, at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your honour in this honourable court, and then and there to answer the premises, and to show cause, if they can, why the said suit and proceedings therein had, should not stand and be revived against them, and be in the same plight and condition as the same were at the time of the abatement thereof, and further to stand to and abide such order and decree in the premises as to your honour shall seem meet. And your orator shall ever pray, &c.

No. 130.—Page 380.

ORIGINAL BILL IN NATURE OF A BILL OF REVIVOR.

Against the heir and devisee.

To, &c.

Complaining, show unto your honour, your orator L. B. of, &c., that on or about the day of in the year he filed his original bill of complaint in this court against C. M. now deceased, setting forth in substance that [set forth briefly the statements of the bill, enough to show the nature of the case and rights involved,] and praying, &c., [the prayer at length.] And your orator further shows, [state the proceedings had in the cause, and its then situation.] And your orator further shows, that before any further proceedings were had in such cause, and on or about the day of the said C. M. departed this life, leaving D. M. a defendant hereafter named, his only child and sole heir at law him surviving. And your orator further shows, *by way of supplement*,⁽¹⁾ that the said C. M. in his lifetime made and published his last will and testament, dated the day of duly executed to pass real estate, and therein and thereby devised all his estate, real and personal, to B. O. of, &c., who thereby claims to be entitled to, and have an interest in the premises in question in this cause, as by such last will and testament, or the record thereof, in the office of the surrogate of the city and county of New-York,

(1) In several forms in the second edition of *Equity Draftsman*, and in *Willis on Equity Pleadings*, this clause is inserted in mere bills against executors. If this is right, such a bill is one of revivor and supplement. But it is generally described as an original bill in nature of a bill of revivor. *Lube*, 296.

before whom the same was proved, will on reference appear. And your orator is advised, that the said suit having become abated by the death of the said C. M. he is entitled to have the same revived against the said D. M., the heir at law of the said C. M., and is also entitled to have the said suit and the proceedings therein stand in the same plight and condition, and to have the benefit of such proceedings against the said B. O., the devisee in such will, in the same manner and to the same effect as he was entitled to against the said C. M. in his lifetime. But now so it is, may it please your honour, that the said D. M., to defeat the just claims of your orator, sometimes pretends that the will of the said C. M., herein before mentioned, was not duly executed to pass real estate, or that the same was unduly obtained, and ought to be set aside, or that the said C. M., at the time when he is alleged to have executed the same, was wholly incompetent to execute such last will and testament, or any will and testament—(which pretences of the said D. M. your orator charges are wholly unfounded and untrue.) To the end, therefore, that the said suit and proceedings may stand revived against the said D. M., and be in the same plight and condition as they were in at the death of the said C. M., and that your orator may have the same benefit and advantage of such suit and proceedings against the said B. O. as he could or might have had against the said C. M., if he were living, or that they may show good cause to the contrary. And that the said D. M. and B. O. may, upon their several and respective corporal oaths, full, true, and perfect answer make to all and singular the premises, and especially (such special interrogatories, as to the execution of the will, &c., as the pleader shall deem proper. None in this case are absolutely necessary.) May it please your honour to grant unto your orator the people's writ of subpoena to revive and answer, issuing out of and under the seal of this court, directed to the said D. M. and B. O., commanding them, and each of them, by a certain day, and under a certain penalty, therein to be limited, to be and appear in this court then and there (if they shall deem it necessary) to answer the premises; and the said D. M. to show cause, if any he has, why the said suit and the proceedings therein should not stand and be revived against him, and be in the same plight and condition as they were at the death of the said C. M.; and the said B. O. to show cause, if any he has, why your orator should not have the same benefit of this suit and of all the proceedings therein against him, the said B. O., as your orator had or could have against the said C. M., if living; and further, that the said D. M. and B. O. may stand to and abide by such further order or decree of this court as may be made in the premises.

And your orator shall ever pray.

No. 131.—Page 390.

BILL WHERE EXCEPTIONS HAVE BEEN TAKEN TO THE ANSWER.

(The preceding form will be a sufficient guide in this case, except that in the statement of the proceedings in the cause, there will be added as follows.) And your orator further shows, that exceptions were taken to the answer of the said defendant, which remained unanswered at his death ; which exceptions were as follows, to wit : (set them forth.) In the prayer add—that the defendant may answer the matters of the said exceptions, as well as the matters of the bill of revivor.

(The form will be similar where amendments have been made, and are unanswered.)

No. 132.—Page 392.

ANSWER TO A BILL OF REVIVOR AND ORDER.

This defendant, &c., answering, saith, he believes it to be true, that at or about the time in the said bill stated, the several persons therein in that behalf named, exhibited their original bill of complaint in this honourable court against such persons, as defendants thereto, as in the said bill are mentioned, thereby stating and praying to the effect in the said bill set forth, so far as the same is therein set forth ; but for his greater certainty, nevertheless, this defendant craves leave to refer to the said original bill, decree, and other proceedings now remaining as of record in this honourable court ; and this defendant, further answering, saith, that A. W., in the said bill named, hath lately departed this life, and that the said A. W. duly made and published his last will and testament in writing, and thereby appointed dame A. B., R. T., and this defendant, executrix and executors thereof ; and that this defendant hath since the death of the said A. W. alone duly proved his said will, in the office of surrogate of the city and county of New-York, and is thereby become his legal representative ; but this defendant does not know, nor can he set forth, as to his belief or otherwise, who is the heir at law of the said A. W. And this defendant further saith, he doth not know, nor can form any belief, whether the said A. W. did or did not, after the making of the report in the said bill mentioned, receive any sum or sums of money, arising from the real or personal estate of D. G. the elder, the testator in the pleadings of this cause named, which ought to have been accounted for by him ; but this defendant saith, he admits that he hath received assets of the said A. W., sufficient to answer any such sum or sums of money, if it shall appear that any such were received, and not accounted for by the said A. W., in his lifetime. And this defendant saith, that he is a stranger to the several other matters and things in the said bill inquired after ; but submits that the said suit, and the proceedings had therein,

should stand and be revived against him, this defendant, as such personal representative as aforesaid. And this defendant denies all combination, &c.

Order to revive, on answer submitting. (See ante, No. 128.)

No. 133.—Page 384.

BILL OF REVIVOR UPON THE MARRIAGE OF A FEMALE PLAINTIFF.

In Chancery.

Humbly complaining, show unto your honour, your orator and oratrix, C. D. and M. his wife, that on or about your oratrix, by her then name of M. R. exhibited her original bill of complaint in this honourable court against — — and S. W. as defendants thereto, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth, and praying, &c. And your orator and oratrix further show, that the said several defendants, being duly served with process of subpoena, severally appeared and put in their answers to the said original bill: as in and by, &c. And your orator and oratrix further show, that your oratrix took several exceptions to the answer put in by the said defendant S. W. to the said original bill, and which said exceptions were upon argument allowed by the master to whom the same were referred. And your orator and oratrix further show, that your oratrix afterwards obtained an order of this honourable court to amend her original bill, and that the said defendant S. W. might answer the said amendments, at the time that he answered the said exceptions. And your orator and oratrix further show, that before the said S. W. had put in his answer to the said exceptions, or any further proceedings were had in the said suit, and on or about the day of your oratrix intermarried with your orator C. D., whereby the said suit and proceedings became abated. And your orator and oratrix are advised, that they are entitled to have the same revived, and to be put in the same plight and condition as the same were in at the time of the abatement thereof. To the end, therefore, that the said suit and proceedings which so became abated as aforesaid, may stand revived, and be in the same plight and condition as the same were in at the time of such abatement, or that the said defendants may show good cause to the contrary. May it please your honour to grant unto your orator and oratrix the people's writ of subpoena to revive, issuing out of and under the seal of this honourable court, to be directed to the said — — and S. W., commanding them at a certain day, and under a certain penalty to be therein expressed, personally to be and appear before your honour in this honourable court, and then and there to show cause, if they can, why the said suit and proceedings therein had should not stand and be revived against them, and be put in the same plight and condition as the same were at the time of the abatement thereof; and further, to stand to and abide such order and decree in the premises as to your honour shall seem meet. And your orator shall ever pray, &c.

No. 134.—Page 384.

ORDER THAT HUSBAND BE DEEMED A DEFENDANT.(1)

(Title.)

At, &c.

On reading and filing an affidavit proving that the above named defendant E. H. S. has lately intermarried with, and now is the wife of C. C., of the city of New-York, and also on reading and filing a written consent of the said C. C., and on motion of I. L. G., Esq., solicitor and of counsel for the complainant in this suit, it is ordered, that all proceedings hereafter to be had in said suit, do proceed against the other defendants and against the said C. C., who is hereby made a party defendant thereto; and it is further ordered, that in such further proceedings in this suit, the title thereof, be altered in the following particulars: that is to say, by inserting immediately before the name E. H. S. the words "*C. C. and E. H. his wife, late*"(1)

No. 135.—Page 403.

FRAME OF A PETITION FOR LEAVE TO FILE A SUPPLEMENTAL BILL.

(Title.)

To, &c.

The petition of, &c.

That on or about the day of your petitioner filed his bill in this court against C. D., &c., stating in substance, among other things, [insert herein the material allegations of the bill,] and praying; [the prayers at length;] and your petitioner further shows, that the said C. D. appeared to such bill, and filed his answer thereto; [state the proceedings in the cause;] and your petitioner further shows, that before any further proceedings were had in such cause, the said C. D., [state the circumstances rendering the supplemental bill necessary,] and your petitioner is advised that it is necessary to bring the said S. T. before this court as a party to this suit. Your petitioner therefore prays, that leave may be granted to him to file a supplemental bill against the said S. T., to make him a party defendant therein, with proper allegations, setting forth at large the facts and matters before stated, with all necessary and incidental matters, and all proper interrogatories adapted thereto, and with such prayer for relief in the premises as may be proper. And your petitioner, &c.

(Usual Jurat.)

A petition to file a supplemental bill where a receiver had been appointed in another suit over executors.

(Title.)

To the chancellor of the state of New-York.

The petition of ————, of the city of New-York, the above complainant, respectfully represents,

That on or about the twenty-ninth day of December, in the year

(1) This was the order in *Graff v. Seaman*, and was by consent.

one thousand eight hundred and twenty-nine, your petitioner, as a creditor of R. S. H., of the city of New-York, filed a bill in this honourable court on behalf of himself and such other of the creditors of said insolvent as should come in and contribute to the expense of said suit—that said bill stated in substance, among other things, that the said R. S. H., being indebted to your petitioner, had in the year one thousand eight hundred and eighteen made an assignment of all the property of him the said R. S. H., of what kind or nature soever, to one A. S. H. in trust, to pay the debts of him the said R. S. H.; that in the year eighteen hundred and twenty-six the said A. S. H. departed this life, having first made and executed his last will and testament, by which he appointed the above named W. P. H. and I. D. H., with one I. R. W., his executors, under which, however, only the above defendants qualified that said A. S. H. had received during his lifetime large amounts of property and money under said assignments, and had kept the accounts thereof in a very negligent and improper manner; and that at the time of his death had not finished his trust, nor rendered any account thereof to those interested therein—that his said executors, the above defendants, after his death, had taken possession of a large amount of property left by the said A. S. H., and of all his books of accounts, papers and vouchers relating to his management of said trust—that, among other things, the said A. S. H. had during his lifetime misappropriated a large amount of funds that had come into his hands by virtue of said assignment—that he had neglected as to other sums to charge or credit them to the right account; and as to other sums, that he neglected to account for them at all; that among these last was a legacy left by the said R. S. H., amounting to about the sum of eleven hundred and fifty dollars by one N. D., and which had come into the hands of the said A. S. H. as executor of the said N. D., under the circumstances in said bill mentioned; and charging that there was and is due to your petitioner and the other creditors of the said R. S. H., a large sum of money from the said A. S. H., under and by virtue of said assignment, but not sufficient to pay all the just demands of said creditors—that no account had ever been rendered by the said A. S. H. of his management of said trust, nor had any account been rendered, (except some private account confined to certain of the creditors, as is in said bill stated,) by the above defendants as executors of the said A. S. H., since his death, to the general creditors of the said R. S. H.; and said bill, after various other charges and averments, prayed in substance, among other things, that the above defendants might discover and set forth the true state of the account between the said A. S. H., assignee as aforesaid, and the said R. S. H. at the time of the death of the said A. S. H., and particularly what amount of the estate left by the said A. S. H. at his death ought, in equity, to be applied by the said defendants as his executors to the payment of the debts of the creditors of the said R. S. H., and that account might be taken of the real and personal estate of the said A. S. H., and that so much thereof as might be necessary should be applied to the satisfaction of the claims of your petitioners and the other creditors of the said R. S. H., according to the terms and provisions of the said assignment in their favour, and praying relief and an injunction against the said

W. P. H., and subpoena for the above defendants, as by reference to said bill of complaint now on file in this honourable court will, among other things, more fully and at large appear.

And your petitioner further represents, that the answers of the above defendants were duly put into said bill, and replications to said answers duly filed on the part of your petitioners. And your petitioner further represents, that since the filing of said replications, and before any further proceedings were had in said cause, J. D., of the city of New-York, as your petitioner is informed and believes, was duly appointed a receiver of the property and effects whereof the said A. S. H., deceased, under and by virtue of an order of this honourable court made in a cause depending in this court, in which J. H. is complainant, and the said W. P. H., J. D. H., and R. S. H., and others are defendants, and dated the first day of September, one thousand eight hundred and thirty; that as your petitioner is informed and believes, the said J. D. has duly qualified and given bonds as such receiver, and by virtue of such appointment has proceeded to take into his possession the books of accounts and other papers and vouchers belonging to the estate of the said A. S. H., but what property, real or personal, of said A. S. H., your petitioner does not know. And your petitioner further represents, that he is advised that under the circumstances aforesaid, it is proper that the said J. D. should be made a party defendant to this suit.

Your petitioner, therefore, prays leave to file a supplemental bill to which the said J. D. may be made a party defendant with apt and proper words to charge him as a defendant, or for such other order in the premises as shall be just and proper.

And your petitioner, &c.

No. 136.—Page 406.

FRAME OF A SUPPLEMENTAL BILL.

To, &c.

Complaining, sheweth unto your honour, your orator M. C., of, &c., by leave of this court first had, that your orator on or about the day of last, exhibited his original bill in this court against W. J., stating in substance, among other things, [the scope and material allegations of the bill briefly,] and praying—[the prayer at length.] And your orator further shows, that the said D. M. appeared and filed his answer to such bill, and your orator replied to the same. And your orator further shows, by way of supplement, [leave of this court having been first granted thereof,] that before any proceedings were had in such cause, [state the facts rendering the supplemental bill proper.] And your orator is advised, that he is entitled to the same relief against the said J. D. as he would have been entitled against the said W. T.(1) To the

(1) This clause will be used if a new party is introduced, succeeding to the right of the former party.

end therefore, [the usual interrogating,] and that your orators may have the full benefit of such suit and proceedings against the said [the new party] and may have the same relief against him as he might or would have had against the said [the original party] or that your orators may have such further and other relief in the premises as to your honour shall seem meet. May it please your honour to grant [pray subpoena against the new party, if one brought in by the bill. If the bill is against the old parties on new subsequent matters, the clauses praying the full benefit of the suit, &c., will be omitted, and the prayer be in the usual form.}]

Supplemental bill upon insolvency of defendant.

Complaining, sheweth unto your honour, your orators, A. B., &c., that your orators on or about the day of last filed their bill in this court against J. T. &c., setting forth in substance, that, &c., and praying that an account might be taken of the personal estate, effects, &c., of J. B., deceased. And your orators further show, that the said defendant having been served with process to appear, appeared accordingly, and put in his answer to the said bill, and your orators replied to such answer. And your orators by leave of this court first obtained, further show, by way of supplement, that before any further proceedings were had in such cause, and on or about the day of the said J. T. became insolvent, and thereupon on or about the said day of the said J. T. presented a petition to B. R., recorder of the city and county of New-York, pursuant to the 3d article of title 1st of chapter 5, of part 2, of the revised statutes, praying for the discharge of the said J. T. from his debts, which petition was signed by the said J. T., and, as was alleged, by so many of his creditors residing within the United States as had debts in good faith owing to them by said J. T. then due or thereafter to become due, and amounting to at least two thirds of all the debts owing by him to creditors residing within the United States.

And your orators further show, that such proceedings were had under the said petition, as that an assignment was directed by the said recorder of all the estate of the said J. T., both in law and equity, in possession, reversion, or remainder, excepting certain articles of wearing apparel, and bedding, and the arms and accoutrements required by law to be provided by any citizen enrolled in the militia. And thereupon, an assignment was made pursuant to the statute in such case provided, by the said J. T. to L. B., of the city of New-York, who claims to be thereby invested with all the interest of the said J. T., at the time of executing the same, in any estate or property, real or personal, whether such interest be legal or equitable. And your orator is advised, that he is entitled to the same relief against the said L. B., as he would have been entitled to against the said J. T., had he not become insolvent, and made such assignment. To the end therefore, that the said L. B. may full and perfect answer, &c. [usual interrogatory.] And that your orators may have the full benefit of the said suit and proceedings against the said L. B., and may have the same relief against him as your orators might, or could have had against the said J. T., in case he had not become insolvent, and made such assignment, or that your orator may have such further and other relief in the premises as to your

honour shall seem meet. May it please [pray subpoena against L. B.] It is not probable that any other defendants need be made parties to the supplemental bill in this case.

No. 137.—Page 411.

GENERAL FRAME OF A SPECIAL ORDER, UPON MOTION OR PETITION.

Motion.

(Title, No. 13.)

At, &c. (No. 13.)

Upon reading and filing an affidavit of A. B., (and a certificate of D. K., master in chancery, dated the day of) and upon motion of I. R., of counsel for the complainants, and hearing M. H., of counsel for the defendants, [or, and also upon reading and filing an affidavit, sheweth the due service of a notice of this motion,] it is ordered, that

Petition.

Upon reading and filing a petition of A. B., complainant in the above entitled cause, duly verified, and upon motion of I. R., in support of the same, and hearing M. H. in opposition thereto, [or, and also reading and filing an affidavit, showing due proof of service of a notice of presenting the same on M. H., the defendant's solicitor,] it is ordered, &c.

No. 138.—Page 422.

NOTICES OF AN ORDER BEING ENTERED.

(Title—ante, No. 13.)

Take notice, that an order has been this day entered in the above cause, with the clerk of this court, requiring the complainant to deliver a copy of the bill in this cause, within twenty days after service of notice of such order.

New-York, Oct. 7, 1833.

M. H., Solicitor for defendant.

To C. D.,

Solicitor for complainant. }

Notice of special motion.

(Title.)

Take notice, that I intend to move this honourable court on Tuesday, the day of next, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at the capitol, in the city of Albany, that, &c., which motion will be founded upon the affidavit hereto annexed, and the pleadings in this cause.

To A. B., Solicitor for defendant.

M. H., Solicitor for complainant.

Of presenting petition.

Take notice, that a petition, of which the annexed is a copy, will be presented to his honour the chancellor at the capitol, in the city of Albany, on, &c.; at ten o'clock, &c., and a motion made that the prayer thereof be granted.

Notice of motion to revive absolutely.

(Title, &c.)

Take notice, that I intend to move this honourable court on Tuesday, the 7th day of June next, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, that this cause be deemed to stand absolutely revived and in the same plight and condition as it was at the death of I. A., a party defendant to the original bill therein; which motion will be founded upon the petition to revive, filed in this cause, the order made thereupon on the 21st of April last, and the answers filed to such petition.

No. 139.—Page 429.

FORMS WHERE COSTS OR MONEY IS ORDERED TO BE PAID.

Affidavit of service of order and demand.

(Title.)

State of New-York, }
City and County of New-York, } ss.

H. F. L., of the city of New-York, a clerk in the office of T. T., solicitor of the above named complainants, being duly sworn, deposeth and saith, that on the day of instant, he served L. B., the defendant in the above cause, with a copy of the order of this court, made in this cause, dated the day of which is hereto annexed, and a copy of the taxed bill of costs, taxed under such order, and at the same time exhibited to the said L. B. a power of attorney, under the hand and seal of the said C. R., complainant, endorsed upon the copy of such order hereto annexed, authorizing and empowering this deponent to demand and receive the sum of \$ the amount of such taxed bill of costs, which service was made by delivering the copy of such order and taxed bill, and exhibiting the said power of attorney to the said L. B. personally. And this deponent thereupon demanded of the said L. B. payment of the said sum of \$ costs as aforesaid, on behalf of the said complainant, but the said L. B. wholly refused to pay the said sum of \$ [Add in affidavit of the solicitor that he has not received the costs.]

Power of Attorney.

(Endorsed upon the copy order retained for use.)

I hereby authorize and empower H. T. L., of the city of New-York, clerk, to demand and receive of L. B., defendant in the within entitled cause, the sum of \$ being the amount of the costs as taxed under the foregoing order.

according to the annexed bill of costs ; and his receipt will be a full discharge to the said L. B. for such amount.

Sealed, &c., in the presence of

Order for precept to commit.

(Title, No. 13.)

At, &c. (No. 13.)

Upon reading and filing the affidavits of H. T. L. and of F. G. with certain papers thereto annexed, showing the due service of a copy of the order made in this cause on the day of last, and of a copy of the bill of costs taxed in this cause pursuant to such order, and also a demand of payment of the amount of such costs, and the neglect (or refusal) of the said defendant L. B. to pay the same ; and further, on reading and filing a taxed bill of the costs of the proceedings to compel the payment of the costs aforesaid ; thereupon, on motion of, &c., it is ordered, that a precept be issued out of, and under the seal of this court, directed to the sheriff of the city and county of New-York, commanding him to take the body of the said L. B., if he should be found in his bailiwick, and commit him to the prison in the city and county of New-York, and keep and detain him therein, under his custody, until he should pay the said sum of \$ for the said costs so ordered to be paid, together with the said sum of \$ for the costs and expenses of the proceedings to compel such payment, together with the fees of such sheriff.

Precept to commit the party.

(See form No 10, appendix to the rules.)

No. 140.—Page 433.

PROCEEDINGS UPON THE VIOLATION OF AN INJUNCTION.

Affidavits.

(The affidavits showing the violation will of course vary in every case.)

Order for an attachment.

(Title.)

At, &c. (No. 13.)

Upon reading and filing the affidavits of D. M., &c., and hearing Mr. R. B., of counsel for the complainant, and Mr. L. R., of counsel for the defendants, it is ordered, that an attachment as for a contempt be issued against the defendant J. L., and that he be held to bail in the sum of \$500, returnable at the next regular motion day after he is taken on such attachment : [service, however, to be made days before such motion day, otherwise on the ensuing regular motion day.]

Return of Sheriff.

I have taken the defendant J. L. on the within attachment, and have let him at large on bail, according to the bond hereto annexed.

J. S., Sheriff.

Order on return of attachment.

(Title.)

At, &c.

The sheriff of the county of Columbia having this day made return to the attachment issued against the above named defendant, that he has taken the body of said defendant, and has taken a bond for the due appearance of said P. B., according to the exigency of said attachment ; on filing said attachment, and return, and the bond accompanying the same, and said P. B. appearing in court and not admitting himself to be guilty of the contempt alleged against him—it is ordered, that said complainants forthwith file in the office of the register of this court, interrogatories specifying the facts and circumstances alleged against the said defendant, and requiring his answer thereto ; and it is further ordered, that said defendant make written answers to said interrogatories on oath within twenty-four hours after serving said interrogatories on him ; and it is further ordered, that it be referred to Julius Rhoades, Esquire, one of the masters of this court residing in the city of Albany, to examine said defendant on oath on said interrogatories, and that such master may take such further proofs touching the alleged contempt, as shall be produced to him by either party, and that he report such answers and proofs to this court ; and it is further ordered, that the said defendant attend this court from day to day, until the further order of this court.(1)

Interrogatories.

(Title of cause.)

Interrogatories to be exhibited on the part of the complainant, for the examination of J. L., a defendant in this cause, pursuant to an order made therein, dated this day of instant.

First Interrogatory.—Have you not received a copy of an injunction issued in this cause, restraining you from committing waste upon a lot of land situate in the town of Cornwall, in the county of Orange, now in your possession ? Was or not such injunction served upon you by showing you the original under, or appearing to be under, the seal of this court, and leaving you a copy thereof ? When was such service made, and by whom ? Answer fully.

Second Interrogatory.—Is not the writ of injunction now shown and read to you the one served, and a copy whereof was so left with you ? Answer fully.

Third Interrogatory.—Do you know the premises mentioned in the said injunction, and have you not resided thereon, and for what length of time, and do you not continue to reside thereon, and by whose permission have you so resided ?

(1) The order in the case from which this form is taken, (*Livingston v. Bryant*, June 20, 1832,) contained a clause that the master was to inquire whether the defendant had violated the injunction, and had been guilty of the contempt alleged. The chancellor said that the order was wrong ; that the master was only to take and report the answers and testimony.

Fourth Interrogatory.—Have you not continued to cut down wood and timber growing on said place, since the service of the said injunction, and cart the same away, and how many loads have you cut and carted in each year for the last five years?

Fifth Interrogatory.—Did you not sell or dispose of to Benjamin Welsh, a quantity of wood and timber cut from off said place, and at what time?

Sixth Interrogatory.—Where you not served with papers and a notice, and by whom, that an application would be made for an attachment against you for violating the said injunction, and when did you receive the same?

Seventh Interrogatory.—Have you not continued to cut and cart from the premises mentioned in said injunction, since you received the said papers and notice, and did you not continue to cut and cart from said premises wood and timber, up to the time you was taken by the sheriff on the attachment, and were you not in the act of carting wood therefrom when the sheriff arrested you?

Eighth Interrogatory.—By whose authority or permission have you, so as aforesaid, from time to time cut and carted the wood and timber from off the said place?

Ninth Interrogatory.—Has any other person, by your authority, cut or carted from the said place any wood or timber? to what amount? and who so cut or carted away the same, and at what times?

W., Sol.
R. B., of Counsel.

J. W.
Ass't. Reg'r.

Answer and examination.

The answer and examination of J. L., a defendant in this cause, to the interrogatories filed therein for his examination on behalf of the complainant, pursuant to an order of this court, dated the day of instant.

To the first interrogatory he answers and saith, &c. &c.

Sworn and subscribed } (Signed.)
before me. (1) }

Order to estimate damages.

(Title.) At, &c. (No. 13.)

On reading and filing the report of J. R., to whom it was referred to examine the above named defendant J. R. D., on interrogatories, and to report whether the said J. R. D. is guilty of a violation of the injunction issued in this cause, and of a contempt of this court, and on filing the interrogatories and examination annexed to said report, from which it appears that said defendant has been

(1) In the precedents I have met with, the attestation has been as above. In *Livingston v. Bryant*, (post, No. 141,) the master was ordered to examine the defendant on oath upon the interrogatories. This would seem to imply that the master was to administer them, otherwise the course would be for the party to put in his examination as advised, and swear to it as to an answer, which has been done in other cases of contempt—for example, in *Ferris v. L'Amoreaux*.

guilty of a violation of said injunction; and on motion of L. H. of counsel for the complainants, it is ordered, that said report of the said master be confirmed, and that it be referred to one of the masters of this court to ascertain what loss or injury the complainants have sustained by reason of this violation of the said injunction by the said defendant, and that the said master report thereon with all convenient speed.

No. 141.—Pages 435, 436.

ORDER TO FILE INTERROGATORIES—TO ATTEND COURT, &c.,

(Title.)

At, &c.

The sheriff of the county of Columbia having this day made return to the attachment issued against the above named defendant, that he has taken the body of said defendant, and has taken a bond for the due appearance of said P. B. according to the exigencies of said attachment; on filing said attachment and return, and the bond accompanying the same, and said P. B. appearing in court and not admitting himself to be guilty of the contempt alleged against him—it is ordered, that said complainants forthwith file in the office of the register of this court, interrogatories specifying the facts and circumstances alleged against the said defendant, and requiring his answer thereto; and it is further ordered, that said defendant make written answers to said interrogatories on oath within twenty-four hours after serving said interrogatories on him; and it is further ordered, that it be referred to Julius Rhoades, Esq., one of the masters of this court residing in the city of Albany, to examine said defendant on oath on said interrogatories. And it is further ordered, that said defendant attend in court from day to day, until the further order of this court.

No. 142.—Page 436.

INTERROGATORIES ON CONTEMPTS.

On violating an injunction.

(Ante, No. 140.)

On attachment for not answering.

(Title.) Interrogatories to be exhibited to J. D., a defendant in this cause, under an order of this court, dated the day of instant.

Did you, and when, appear to the plaintiff's bill exhibited against you in this honourable court? Did you appear in pursuance of a subpoena formerly served on you for that purpose? and have you seen, perused, or had a copy of the said bill, and do you know the contents thereof? and how came you to

understand or know the same? and when, and by whom, and in what manner did you appear and take a copy of the said bill, or get a sight of such copy, and first understand the contents thereof? and did you put in your answer to the said bill within the time limited for that purpose, or hath any, and what answer, yet, and when, been put in thereto by you, or how otherwise? Declare, &c. [Willis' Interrogatories, p. 294.]

On attachment for not paying costs.

Interrogatories to be exhibited to E. S., a defendant in this cause,
(Title.) on the part of the complainants, under an order of the
day of

First Interrogatory.—Was you or was you not, on the day of last, personally served with a copy of an order made in this cause, dated the day of last, ordering you to pay the costs of the exceptions taken by the complainants to your answer, which were taxed at the sum of \$24 32? and was there or was there not, at the same time exhibited to you a written power of attorney, or authority to C. M., who served such order, to receive such amount?

Second Interrogatory.—Have you, or any persons by your directions, or on your behalf paid such amount, or any part thereof? Declare fully.

W. H., Solicitor of Complainants.

H. M. of Counsel.

Upon a refusal to produce a deed before a master, where a sale had been made under a decree.

(Title.) Interrogatories to be exhibited to J. D., a defendant in this cause,
on the part of the complainants, under an order of this court,
dated the

First Interrogatory.—Have you ever seen a deed of the premises formerly known as 69 Partition-street, now as No. 170 Fulton-street, to Abraham Brower, your father? If yea, state when, by whom was the same executed, and what was the date thereof?

Second Interrogatory.—Have you ever had said deed in your possession? If yea, from whom did you receive it? Had you the same in your possession, or under your control, on Monday, the 27th of January, 1834? Is the same now in your possession, or under your control? If not, when did you part with such possession or control, and to whom did you deliver said deed, and where is the same at this time?

Third Interrogatory.—Were you applied to on the said 27th day of January, by the solicitor of said complainant, John C. Morrison, and by William F. Phye, the purchaser of said premises, or either of them, and which, to exhibit said deed, and deposit the same with Stephen Cambreling, Esq., master in chancery, for inspection? And were you not informed by said solicitor, or said Phye, or either of them, and which, that the inspection of said deed was necessary to complete the purchase of said premises? Did the said Phye inform you, and when, that he would not take said premises unless he could see said deed, or did any other person tell you so on behalf of said Phye? If so, who, and when, so told you?

Fourth Interrogatory.—Did you, on the twenty-eighth day of January, 1834, receive a notice that a motion would be made in this court on the 29th day of said January, for an order of this court, requiring you to exhibit said deed, and deposit the same with the said master? Did your solicitor William P. Hawes, on said 29th day of January, show you a copy of the order made on that day by this court, requiring you to deposit said deed with said master, and did you inform said solicitor that you would not comply with said order? Were you personally served, on said 29th day of January, with a copy of said order, by the solicitor of the said complainant, and requested by him to deposit said deed with said master? And did you not then inform said solicitor that you would not deposit said deed, or exhibit the same to any one? If not, what did you state to said solicitor?

Fifth Interrogatory.—Have you yet deposited said deed with said master as required by said order of this court, made on said 29th day of January, and a copy of which was served on you?

H. E. D., Solicitor for Complainants.

S. A. F., of Counsel.

(See also the interrogatories in *Lovett v. Rogers*, post.)

No. 143.—Page 437.

ORDER TO TAKE PROOFS AND DISCHARGE PARTY ON BAIL.

(Title.)

At, &c.

The sheriff of the county of Greene having brought the above defendant into court on an alias attachment issued in this cause out of said court, and this court having caused interrogatories to be filed specifying the facts and circumstances alleged against the said defendant, and requiring him to make answer, and the said defendant having made written answers on oath, denying the misconduct alleged against him; and counsel for the complainant and defendant having been heard, on motion of A. D. R., Esq., of counsel for the complainant, it is ordered that the said interrogatories and answers be referred to J. R., Esq., one of the masters of this honourable court residing in the city of Albany, to take such affidavits or other proofs of the facts therein mentioned as may be offered contradictory of the answers of the said defendant, or in confirmation thereof.

That subpoenas issue out of and under the seal of this court, directed to R. R., Esq., a solicitor of this court, residing in the city of New-York, requiring his personal attendance before said master, to be examined and cross-examined on oath touching the matters aforesaid, and such other witnesses as the said complainants and defendants may deem advisable or necessary. That said subpoena or subpoenas be served on said witnesses four days before their examination before said master; and that said master make report of the proof taken before him to this court, with all convenient speed. It is further ordered, that the defendant remain in the custody of the sheriff of the county of Greene until the

coming in of the master's report, or until the further order of this court, unless he furnishes to said sheriff a bond, with sufficient sureties to be approved of by one of the masters of this court, residing at Catskill, in the county of Greene, in the penal sum of two hundred dollars, conditioned for the appearance of the said defendant in this court on the first Tuesday in January next, before the chancellor, at the capitol, in the city of Albany, and then and there to abide the order and judgment of this court thereupon; and upon the delivery of such bond to said sheriff, that he, the said defendant, be discharged from custody, and that the said bond be filed with the register of this court; and it is further ordered, that in case the defendant does not give the bond as required, that the sheriff bring him before the chancellor on the first Tuesday of January next, and that the said sheriff be entitled to receive the same fees as if the defendant was brought up by a writ of habeas corpus.

It is further ordered, that the case and proceedings stand adjourned over until the first Tuesday in January next, before the chancellor, in the city of Albany.(1)

No. 144.—Page 441.

ORDER AND MITTIMUS ON PUNISHING CONTEMPTS:

(It is presumed that these can readily be framed from the forms Nos. 41—45, and from those in *Lovett v. Rogers*, post, No. 145.)

No. 145.—Page 441.

PROCEEDINGS IN *Lovett v. Rogers*—ON CONTEMPT—REFUSAL TO DELIVER BOOKS, &c.

(Title.)

At, &c.

A motion having been this day made, pursuant to previous notice for that purpose, given by the solicitor of the complainant to the solicitor of the defendant Warren Rogers, and founded upon three affidavits of Edward A. Furman, a summons of Master Codwise, to said affidavits annexed, the underwriting thereto, a copy of an order entered in this cause the fourteenth day of December one thousand eight hundred and twenty-nine, the report of said Master Codwise, the request of D. Lord, junior, solicitor for the complainants, to the sheriff of New-York, and the certificate of James Shaw, sheriff of New-York, that the defendant Warren Rogers is a prisoner on the limits of the gaol of the city and county of New-York, for an order that an attachment issue against the defendant Warren Rogers for his contempt in not obeying the order made in this cause on the nineteenth day of November, one thousand eight hundred and

(1) This was the order in *Stagg v. Outwater*, altering the word *relators* to *complainants*.

twenty-nine, a certified copy of which order was this day produced, such attachment to take effect as an attachment by the special order of this court, and also for a habeas corpus, returnable before the chancellor, for bringing in the body of the said defendant Warren Rogers on the return day of said attachment, and Mr. Rhoades having been heard in support of the motion, and no person appearing in behalf of said defendant Warren Rogers to oppose the same—on filing an affidavit of Edward A. Furman, endorsed on said notice, proving the service of said notice, and a copy of the papers above referred to, and which are annexed to said notice, it is ordered, that an attachment be, and the same is hereby awarded against the said Warren Rogers, to take effect as an attachment by the special order of this court, and to be made returnable immediately before the chancellor, at the city of Albany; and it is further ordered, that a writ of habeas corpus in the usual form be, and the same is hereby awarded in this cause against the said Warren Rogers, to be directed to the sheriff of the city and county of New-York, commanding him to bring the said Warren Rogers forthwith before this court at the city of Albany.

(Copy.)

JAMES PORTER, Register.

For the form of the habeas corpus, see ante, No. 50.

For that of the attachment, No. 38.

The endorsement was as follows :

In Chancery,
Before the Chancellor.

Attachment.

D. L., Sol.

By the special order of the court, not bailable.

J. P., Register.

Order for filing interrogatories, and intermediate detainer.

(Title.)

At, &c. (March 24th, 1830.)

The defendant having been this day brought into court by the sheriff of the city and county of New-York, upon the attachment issued in this matter on the fifth day of January last, ordered, that the complainants (1) forthwith file interrogatories specifying the facts and circumstances in relation to the contempt alleged against the defendant Warren Rogers, and serve a copy thereof on the said Warren Rogers or his solicitor, and that said Warren Rogers answer such interrogatories on oath within twenty-four hours after service thereof, and file such answer with the register of this court, and that said Warren Rogers remain in the custody of said sheriff, and that the said sheriff attend with him in court from day to day, until the further order of the court.

(Copy.)

JAMES PORTER, Register.

Interrogatories.

Interrogatories for the examination of Warren Rogers, one of the defendants in a cause wherein James Lovett and others are complainants, and the said Warren Rogers and others are defendants, touching certain contempts of the said Warren Rogers in the court of chancery of the state of New-York.

First Interrogatory.—Have you ever appeared, or employed any solicitor to

(1) Altered from the word "relators."

appear for you in the above entitled cause : if yea, who was such solicitor? Where does he and has he resided since, and where have you also resided at the same time ; and have you, or not, been in the habit of frequent communication with him on the subject of this suit ? Declare.

Second Interrogatory.—Did you know, or have you in any manner understood from such solicitor or otherwise, that notice was given to him of application to be made in this cause, since the appeal filed therein, for the issuing of an injunction, and the appointment of a receiver, and did you or not employ counsel to resist the said application, and make an affidavit to ground opposition thereto ? Did you ever hear, or learn, or understand, in any manner, that an order was made conformably to that petition, or otherwise ? Have you or not ever seen, or heard read, or had explained to you, a copy of the order made thereon ? Did or not the same bear date on the nineteenth day of November last, and on what day did the same bear date.

Third Interrogatory.—Were you, on or about the fourteenth day of December last, and when, served with a summons, requiring you to appear before David Codwise, Esq., master in chancery, at a time and place in the said summons named, with an underwriting, that you were there summoned to proceed on the said order of 19th November last, and to deliver into the hands of the receiver appointed in the said cause, certain effects, and to produce certain books and papers, and to be examined thereon on oath ? Were you or not at the same time served with a copy of an order of this court, purporting to have been made on the 14th day of December last, and that James Lovett had been appointed a receiver in this cause ? Declare.

Fourth Interrogatory.—On or about the day of service supposed in the last interrogatory, were you or not served, or offered to be served, with any papers ? If yea, did you or not refuse to receive the same ? What was your motive for such refusal ? Did you not expect to receive any papers in relation to the said order for a receiver, and was not your refusal with some view, belief, expectation, or supposition, that the said papers were papers relating to this cause ? What was done with the said papers so offered to be served on you ? Did the same, or contents, or purport, tenor, effect, or substance of the same, or any of them, ever come to your knowledge, and what became of the same, and where are the same ? Declare.

Fifth Interrogatory.—Did you, on the 18th day of December last, appear at any and what hour, before David Codwise, Esq., master in chancery, at any and what place in the city of New-York ? Did you then and there produce or deliver, upon oath or otherwise, any books, papers, vouchers, or securities, or any goods, chattels, debts, choses in action, moneys, effects, or property ? Did you then and there submit or present yourself for examination on oath, touching any of the matters aforesaid ? Did you or not comply in any manner with the order made in this cause on the 19th day of November last ; if so, how ?

DANIEL LORD, jr., Solicitor, and of Counsel. M. ULSHOEFFER, of Counsel.

Examination.

{ Title.}

The answer and examination of W. R., a defendant in this cause, to interrogatories exhibited for his examination on the part of the complainants, pursuant to an order of this court, dated the day of

To the first interrogatory this examinant answers and saith, that, &c.

Order for Commitment.

{ Title.}

At, &c. (26th March, 1830.)

[Recites the original order for a receiver, the service of a copy, appointment of the receiver, the summons before the master to deliver over the property, the default, the issuing of the attachment, and the habeas corpus, sheriff's return, and that the defendant was brought into court; the interrogatories exhibited and answers filed, and then proceeds.]

Thereupon, on reading the original affidavits and other papers, on which the order for the said attachment was founded, the said interrogatories and the answer of the said Warren Rogers thereto; and on hearing Mr. H. Bleecker, of counsel for the complainants, and Mr. R. M. Blatchford, of counsel for the said defendant Warren Rogers, this court doth declare and adjudge, that the said Warren Rogers has been and is guilty of a contempt of this court, in wilfully neglecting and refusing to comply with the said order of this court of the nineteenth day of November last, to deliver over all and singular the goods, chattels, choses in action, moneys, effects, and property whatsoever above mentioned, upon oath, before a master in chancery, and to produce and deliver over all books, papers, vouchers and securities relating thereto, upon oath as aforesaid, and that such misconduct of the said Warren Rogers was calculated to, and actually did impair, impede, and prejudice, the rights and remedies of the complainants in this cause—it is thereupon ordered, that the said Warren Rogers pay the costs and expenses of the proceedings in relation to the said contempt which have been taxed at ninety-six dollars and sixty-nine cents, and that he be committed to the common gaol of the city and county of New-York, until the said costs and expenses are paid by him, and until he shall deliver over to the said receiver all and singular the goods, chattels, debts, choses in action, moneys, effects, and property whatsoever above mentioned, upon oath, before a master in chancery, and produce and deliver over all books, papers, vouchers, and securities relating thereto, upon oath as aforesaid, according to the said order, and that a mittimus issue accordingly, directed to the sheriff of the city and county of New-York.

(Copy.)

JAMES PORTER, Register.

Mittimus, or warrant on the order to commit.

The People of the State of New-York, to the Sheriff of the city [L. S.] and county of New-York, Greeting: Whereas on the nineteenth day of November, in the year eighteen hundred and twenty-nine, by a certain order made in our court of chancery before our chancery, at the city of Albany, in a certain cause depending in our said court, wherein James Lo-

rett, William A. Tomlinson, William A. Booth, James Hamilton, James Donaldson, William F. Hamilton, The President, Directors and Company of the Manhattan Company, The President, Directors and Company of the Fulton Bank, on behalf of themselves and other creditors, &c., are complainants, and Warren Rogers and others are defendants, it was ordered, that unless the said defendant Warren Rogers should, within ten days from the date of the said order, file security with the assistant register in the sum of fifty thousand dollars, conditioned that the said Warren Rogers should well and faithfully account and pay to the complainants such sum as should be awarded and ordered to be paid by the decree which should finally be made in the said cause, then that a receiver should be appointed of all and singular the goods, chattels, debts, choses in action, moneys, effects and property whatsoever mentioned by him in his answer in the said cause, or in any manner derived from or connected with the property of Joseph Lyon, assigned to him as mentioned in the pleadings in the said cause, and that it should be referred to a master to receive proposals for a receiver, and to approve of the same, and to ascertain in what sum he ought to give security, and the sufficiency of the sureties, and that, upon the confirmation in the master's report in that behalf, and the filing of such security with the assistant register, the person who should be so approved should be appointed such receiver, and the defendant Warren Rogers should thereupon deliver over to such receiver all and singular the goods, chattels, debts, choses in action, moneys, effects, and property aforesaid, upon oath, before a master in chancery, and should produce and deliver over all books, papers, and securities relating thereto, upon oath as aforesaid. And whereas, on the twenty-sixth day of March, in the year eighteen hundred and thirty, by a certain other order made in our said court at the city of Albany, after reciting the order above mentioned, and setting forth the neglect of the said Warren Rogers to give the security therein mentioned, and the consequent appointment of a receiver agreeably to the said order, and the neglect of the said Warren Rogers, after due summons, to comply with the requisitions of the said order to deliver over to such receiver all and singular the goods, chattels, debts, choses in action, moneys, effects and property aforesaid, and produce and deliver over all books, papers, vouchers, and securities relating thereto, upon oath as aforesaid, it was declared and adjudged, that the said Warren Rogers had been and was guilty of a contempt of our said court, in wilfully neglecting or refusing to comply with the said order of our said court to deliver over to the said receiver all and singular the goods, chattels, debts, choses in action, moneys, effects and property aforesaid, and produce and deliver over all books, papers, vouchers and securities relating thereto, upon oath as aforesaid, and that such misconduct of the said Warren Rogers was calculated to, and actually did impair, impede, and prejudice the rights and remedies of the complainants in such cause, and it was thereupon ordered, that the said Warren Rogers pay the costs and expenses of the proceedings in relation to the said contempt, which have been taxed at ninety-six dollars and sixty-nine cents; and that he be committed to the common goal of the city and county of New-York, until the said costs and expenses should be paid by him, and until he should deliver over to such receiver all and singular the goods, chattels, debts, choses in action,

moneys, effects and property aforesaid, upon oath, before a master in chancery, and should produce and deliver over all books, papers, vouchers and securities relating thereto, upon oath as aforesaid. Now, therefore, in order that full and speedy justice may be done in the premises, we command you that you take the body of the said Warren Rogers, and him closely and safely keep in your custody, in the common gaol of the city and county of New-York, until he shall deliver over to such receiver all and singular the goods, chattels, debts, choses in action, moneys, effects and property aforesaid, upon oath, before a master in chancery, and shall produce and deliver over all books, papers, vouchers and securities relating thereto, upon oath as aforesaid, and shall pay the costs and expenses aforesaid, with your fees on this writ, or until our said court of chancery shall make other order to the contrary. And you are to make and return to our said chancellor in our said court of chancery, on the Tuesday of in the year eighteen hundred and thirty, wheresoever it shall then be, a certificate under your hand of your doings in the premises, together with this writ. Witness, &c.

D. L., jr., Sol.

J. P., Reg'r.

Certificate of sheriff endorsed thereon.

I, James Shaw, sheriff of the city and county of New-York, hereby certify, to the chancellor, that under and by virtue of this writ, I have taken and kept and do still keep, the within named Warren Rogers in my custody, under and by virtue of this writ, in the gaol of the city and county of New-York, as in the said writ I am commanded. Given under my hand, at the city of New-York, this day of April, A. D. 1830.

(Title.) *Order for sequestration in Lovett v. Rogers.*

Upon reading the writ under the seal of this court for the commitment of the defendant Warren Rogers for his contempt in not obeying an order made by this court on the nineteenth day of November last, in this cause, by which order the said Warren Rogers was ordered to deliver into the hands of a receiver all and singular the goods, chattels, debts, choses in action moneys, effects and property mentioned by him in his answer to the bill of complaint in the said cause, or in any manner derived from or connected with the property of Joseph Lyon, assigned to him, the said Warren Rogers, as mentioned in the proceedings in the said cause, and also produce and deliver over all books, vouchers, and securities relating thereto, upon oath; and upon reading the certificate of the sheriff of the city and county of New-York, that the said Warren Rogers was held by him in his custody, by virtue of the said commitment for his said contempt, and on reading the affidavit of the receiver appointed in the said cause, showing that the said Warren Rogers had not yet obeyed the said order, but persisted in his said contempt—it is therefore ordered, on motion of Mr. H. Bleecker, on behalf of the complainants, that all the lands, tenements, and hereditaments, of the said Warren Rogers, and all the rents, issues, and profits thereof, and all and singular his goods, chattels, credits, and effects whatsoever be sequestered, and that the sequestrators appointed by this court, do take the same into their hands, and deliver the same into the hands of the

receiver aforesaid, and that all persons having in their hands any of the aforesaid lands, tenements, hereditaments, rents, issues, profits, goods, chattels, credits and effects, or who are indebted to the said Warren Rogers, be, and they are hereby enjoined from delivering or paying to him, or to his order, the same, or any of them, or from applying the same to his use, after publication of notice of this order, on pain of contempt; and that a copy of this order be published for three weeks in the newspapers printed in the city of New-York, entitled the Morning Courier and New-York Enquirer, and in the New-York American, and that a commission of sequestration be issued under the seal of this court to William A. Tomlinson, Oliver H. Hicks, James Hamilton, and James Lovett.

(Copy.)

JAMES PORTER, Register.

Commission of sequestration in Lovett v. Rogers.

The People of the State of New-York, to William A. Tomlinson, Oliver H. Hicks, James Hamilton, and James Lovett, Greeting:

Whereas James Lovett, William A. Tomlinson, William A. Booth, James Hamilton, James Donaldson, and William F. Hamilton, The President and Directors of the Manhattan Company, and The President Directors and Company of the Fulton Bank, complainants on behalf of themselves and other creditors, filed their bill of complaint in our court of chancery against Warren Rogers, Joseph Lyon, James Gallaher, Edmund J. Rogers, Obadiah W. Jones, and The President, Directors and Company of the Union Bank, defendants: And whereas, after the answer of the said Warren Rogers to the said bill of complaint was put in, an order was made on the nineteenth day of November last, among other things, ordering that the defendant Warren Rogers, should deliver over to the receiver, to be appointed under the said order, all and singular the goods, chattels, debts, choses in action, moneys, effects, and property whatsoever, mentioned by him in the said answer, or in any manner derived from or connected with the property of Joseph Lyon, assigned to him as mentioned in the pleadings in the said cause, upon oath, before a master in chancery; and also that the said Warren Rogers should produce and deliver over all books, vouchers and securities relating thereto, upon oath, as aforesaid; and whereas the said Warren Rogers hath refused to comply with the said order, and process of contempt hath thereupon issued against him, and he hath for his said contempt been committed by our chancellor, in the said court of chancery, to the common gaol of the city and county of New-York, and still hath persisted in his said contempt, as to our chancellor in our court of chancery hath been fully made to appear. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any two of you, full power and authority to enter upon all the messuages, lands, tenements and real estate whatsoever, of the said Warren Rogers, and to take, collect, receive and sequester into your hands, not only all the rents and profits of the said messuages, lands, tenements and real estate, but also all his goods, chattels and personal estate whatsoever: and therefore we command you, that you do, at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements and real estate

of the said Warren Rogers; and that you do collect, take and get into your hands, not only the rents and profits of his said real estates, but also all his goods, chattels, and personal estate, and keep the same under sequestration in your hands until our court of chancery shall make further order to the contrary. Witness, Reuben Hyde Walworth, chancellor, at the city of Albany, this twentieth day of April, in the year of our Lord one thousand eight hundred and thirty.

D. Lord, junior, Sol.

J. P., Register.

No. 146.—Page 444.

AGREEMENT OF TENANTS TO PAY RENTS TO RECEIVER.

We severally admit service of a copy of the foregoing order, report and certificate, and in pursuance of such order become the tenants of M. H., the receiver appointed by this court, so long as he shall remain such receiver, and during our tenancy respectively. November, 1831.

Witness.

T. B., &c.

No. 147.—Page 445.

ORDER FOR WITNESS TO SHOW CAUSE.

(Title.)

At, &c. (No. 13.)

Upon reading and filing the affidavits of C. M. and of M. H., whereby it appears that a *subpœna ad testificandum* was duly served upon J. D. on the day of instant, whereby he was required to appear before Z. P., one of the examiners of this court, on the day of instant, to testify on the part of the complainant, and that the said J. D. has wholly neglected to attend as therein required. On motion of, &c., ordered, that the said J. D. show cause, on the day of next, (1) why an attachment should not issue against him, and he be punished for his alleged misconduct in disobeying such *subpœna*; and further, that a copy of this order and of such affidavit be served upon the said J. D. personally days before the said day of

No. 148.—Page 446.

ORDER FOR SHERIFF TO RETURN WRIT.

(Title.)

At, &c.

Upon reading and filing an affidavit of C. B., solicitor of the complainants,

(1) Ensuing motion day.

showing that an attachment for want of an answer was issued against the above defendant, tested the day of instant, and returnable on the day of instant, and was directed and delivered to the sheriff of the county of on the day of instant, to be executed, and that such sheriff has not returned such attachment to this court, neither on such-return day nor since—thereupon, on motion of, &c., it is ordered; that the said sheriff return such writ of attachment to this court, on the day of next, or that an attachment issue against him for his disobedience, without a special application to this court. [2 R. S. 536, § 6.]

No. 149.—Page 447.

ORDER FOR SHERIFF TO BRING IN THE BODY.

(Title.)

At, &c.

The attachment issued in this cause against the defendants therein, for not putting in a further answer and paying the costs, pursuant to an order of this court, being returnable on this day of October instant, and being duly returned by the sheriff of the city and county of New-York, to whom the same was directed and delivered "defendants taken," as by the endorsement of the said sheriff upon such attachment now read appears; and the said defendants being duly called in open court, and failing to appear, and their default for not appearing being duly entered—thereupon, on reading such attachment and return and an affidavit of George W. Giles, solicitor of the complainants, of the facts charged, on motion of Murray Hoffman, of counsel for the above complainants, it is ordered, that the said sheriff of the city and county of New-York, bring in the bodies of the said defendants before the vice-chancellor of the first circuit, at a court to be held at the city-hall of the city of New-York, on the seventh day of November next, wheresoever such court shall then be, or show cause, at that time and place, why an attachment should not issue against him.

No. 150.—Page 451.

REPLICATION.

In Chancery.
Before the

The replication of A. B. and J. L., complainants, to the *separate* answer of C. D., defendant (*one of the defendants*), to the bill of complaint of the above complainant.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication thereunto, say: That they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by

these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are, and will be ready to aver and prove as this honourable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

H. L., Sol. Comp't.

No. 151.—Page 458.

ORDER TO PRODUCE WITNESSES.

(Title.)

At, &c.

This cause being at issue as to all the defendants, except S. L. G. and M. L. D. by replications filed to the several answers of such defendants, and being in readiness for hearing against the said S. L. G. and M. L. D. by the bill being duly taken as confessed by each of them; and more than ten days having elapsed since the last of such replications was put in, and no notice having been given for the examination of the witnesses in presence of a vice-chancellor, it is thereupon, on motion of M. H. one of the complainants in person, ordered, that the parties produce witnesses in this cause within forty days after notice of this order.

(Copy.)

J. W., Ass't. Reg'r.

No. 152.—Page 458.

NOTICE OF THE EXAMINATION OF WITNESSES.

(Title.)

Take notice that the following witnesses will be examined, on behalf of the complainants, before J. D. Hart, one of the examiners of this court: such examination to commence on the day of instant, at the office of such examiner, No. and to proceed as shall suit the convenience of such examiner.

J. P. residing in Water-street, first ward of the city of New-York, merchant.
C. M. of the town of Smithtown, county of Suffolk.

Note.—Since the treatise was printed, the chancellor has decided that a party may examine witnesses named in the list of the adverse party, though not in his own list. *Ten Eyck v. Benton*, April 16, 1834.

No. 153.—Page 458.

SUBPENA FOR WITNESSES.

The People of the State of New-York, by the grace of God free and independent.

To We command you, that all and singular excuses being laid aside, you and each of you be and appear, in your proper persons, before one of the examiners of our court of chancery, at his office, No. in the city of New-York, on the day of at o'clock in the noon, to testify all and singular what you and each of you know in a certain cause now depending undetermined in our said court between complainant and defendant, on the part of the and this you or either of you are not to omit, under the penalty upon you and each of you of \$250. Witness, chancellor of our said state, at the city of New-York, the, &c.

B. R., Solicitor.

J. W., Assistant Register,

No. 154.—Page 459.

ORDER FOR SUBPENA WHERE WITNESS LIVES OVER FORTY MILES FROM EXAMINER OR MASTER.

(Title—ante, No. 13.)

At, &c. (No. 13.)

On reading and filing the petition of Thomas M. McLean, the receiver in the above cause, setting forth, among other things, in substance, that in pursuance of an order of reference heretofore entered in this cause, T. A. E., Esq. the master in chancery named in the said order, has issued his summons, summoning the defendants above named to appear before him at his office in the city of New-York, to be examined touching the property, stock in trade and effects in question in the above cause, and that in order to obtain a complete disclosure of the said property, stock in trade and effects, it will be necessary to examine witnesses in relation thereto; that the said receiver believes it to be important that Alexander Fairley, who resides at Peekskill, which is distant about forty-seven miles from the city of New-York, should be examined before the said T. A. E. the master engaged in the reference of the above cause, and on reading and filing the affidavit of Frances B. Cutting, the solicitor for the complainant, in support of the said petition, and on motion of Mr. Rhoades, of counsel for the complainant, it is ordered, that the complainant have leave to take out process of subpœna to compel the attendance before the said master, and to examine under oath the said Alexander Fairley,

and such other persons as may be thought necessary to obtain a full disclosure of the property, stock in trade and effects.

(Copy.)

J. P., Register.

[*Richards v. Simpson.*]

Order for witness to attend, or to answer questions, see this Appendix, ante, No. 147.

No. 155.—Page 466.

DEMURRER OF WITNESSES.

See office, &c., Masters in Chancery, Appendix, No. 27, p. 354
(The demurrer should be sworn to.)

No. 156.—Page 472.

PETITION FOR A COMMISSION. (Within the state.)

(Title.)

To the Chancellor, &c.

The petition of the above named defendant, respectfully sheweth :

That as your petitioner is informed by his solicitor and believes, the above entitled cause is at issue, as to all the defendants therein, (1) [*other than J. D., against whom the bill of complaint has been taken as confessed,*] that no order has been made for the examination of witnesses, before a vice-chancellor, within the time prescribed by the rules of this court, and that notice of the rule to produce witnesses was given, [or, received] by your petitioner's solicitor on the day of last. Your petitioner further shows that he is desirous of examining A. B., of the town of in the county of in this state, who is a material witness for your petitioner in the above cause, as he is advised ; but that the said A. B. resides over twenty miles from the residence of any one of the examiners of this court.

Your petitioner therefore prays that a commission may be issued out of this honourable court, and under its seal, for the examination of the witnesses above named, directed to J. M. and J. D., of the said town and county.

And your petitioner shall, &c.

For a foreign commission.

Omit the clause in the foregoing form, within brackets, as to the order of a vice-chancellor. The names and residences of the witnesses will be stated without the clause as to the distance from an examiner's residence ; and the residence of the commissioners will also be set forth. If the petition extends

(1) Or, "is at issue," where there is but one defendant.

to witnesses not named, (Treatise, p. .) the special grounds of such an application should be set forth. But this can only be specially to the court.

Notice of presenting, same.

No. 157.—Page 472.

ORDER FOR A COMMISSION OF COURSE.

{ Title.)

At, &c.

A petition of the defendant, duly verified, having been this day presented to J. W., the assistant register of this court, [*or*, this honourable court,] praying that a commission might issue under the seal of this court, directed to the *commissioners* therein named, for the examination of W. B. N., a witness, resident in the and the above named complainant appearing by C. Graham, his solicitor, and joining in such commission, and naming commissioners on his part, [*or*, and due notice of the application for such commission having been given to the adverse party, as appears by an affidavit of G. W. Giles to that effect, now filed,] thereupon, on motion of G. W. Giles, solicitor for the defendant, it is ordered, that a commission do issue out of and under the seal of this court, to be directed to for the examination, as well of W. B. N., of in the county of and state of a witness on the part of the defendant, as of of, &c., witnesses upon the part of the complainant, or either of them, on the interrogatories to be thereto annexed.(1)

Special order for a commission.

" And it is further ordered, that the plaintiff is also to be at liberty to issue a duplicate of such commission, if the same is not issued by the defendant within days after the interrogatories are settled; and that *eight* days notice of the execution of such commission be given by the commissioner or commissioners receiving the same, to the remaining commissioner or commissioners named therein.(2) And further, that the commissioner or commissioners executing the same be authorized to swear one or more interpreter or interpreters, who shall, upon his or their oath, solemnly swear well and truly to interpret the oath or oaths and interrogatories which shall be exhibited and administered to the witnesses to be examined out of the English language into the language spoken by the said witnesses, and also to interpret their depositions taken to the said interrogatories.(3) And it is further ordered, that the time for closing the proofs in this cause be extended until after the return of

(1) (Where a commission is issued under the 69th rule, nothing more, 1 apprehend, can be inserted in the order. But if the court is specially applied to, other provisions may in a proper case be directed. For example,—where the other party has joined.)

(2) Framed from the order in *Bowdin v. Hodge*, 2 Swanst. 260.

(3) *Bowdin v. Hodge*, ut supra.

such commission, or this court shall make further order to the contrary; but if any delay shall arise in obtaining the return of the same, the defendant [or plaintiff] shall be at liberty to apply to this court respecting the same as he shall be advised. (1) And further, that such commission may be returned by mail, addressed to the assistant register of this court. And that the plaintiff be at liberty to issue a duplicate and triplicate of such commission.

No. 158.—Page 472.

COMMISSION TO EXAMINE WITNESSES.—Foreign. (2)

The People of the State of New-York, To
[L. S.] of
Know ye, that we, having full faith in your prudence and competency, have appointed you *commissioner*, and by these presents do authorize you [or any one or more of you] to examine A. B. of and J. D. (*and any other person who may be produced before you*) (3) as witnesses in a cause pending in our court of chancery, wherein J. K. and M. E. K. are complainants, and J. T., &c., are defendants, (on the part of the plaintiff,) [or, *as well on the part of the said J. K. and M. E. K., the plaintiffs, as on the part of J. T., &c., the defendants, or either of them,*] (4) on oath to be to you administered, upon interrogatories annexed to this commission; to take and certify the depositions of the witnesses, and return the same, according to the directions hereto annexed.

Witness, R. H. W., Chancellor of our said state, at the city of New-York, the day of

Commission within the state.

(A home commission will be in the same form, omitting the words "upon interrogatories annexed to this commission," where the examination is to be oral.)

(1) See the case before the chancellor, cited in in *Barnet v. Pardow*, 1 Edwards, 11. The above form is that in *Bowdin v. Hodge*, supra.

(2) After an examination of all the forms in the best English books, I have judged the above the most simple and useful. All minute directions are omitted, and inserted in the instructions.—Upon the latter I have bestowed great attention and labour; and it may be observed that a literal compliance will be less essential than if their provisions were in the commission.

(3) See Treatise, p. 474, as to the necessity of naming the witnesses.

(4) If the commission is joint, the clause in italics will be used.

FORM OF INTERROGATORIES.

Interrogatories to be administered to witnesses, to be produced, sworn and examined in a certain cause now pending in the court of chancery for the state of New-York, wherein A. B. is complainant, and C. D. defendant, (under a commission issued out of such court, directed to J. T. and L. C., of, &c., commissioners on the part of the complainant, [or, on the part as well of the said complainant as of the said defendant.]

First Interrogatory.—What is your name, occupation, and place of residence?

Second Interrogatory.—Do you know the parties, complainants and defendants, in the title of these interrogatories named, or any, or either of them and which of them, and for how long have you known them, respectively, or such of them as you do know? Declare the truth fully.

Third interrogatory.—Look upon the deeds or writings produced and shown to you at the time of your examination, marked respectively with the letters A. B. C. and D.; were or was the same, or either, or which of them, at, or about any, and what times, or time, signed, sealed, and delivered, or signed by any, and what persons, or person, in your presence? Are you a subscribing witness to the signing, sealing, and delivery, or signing thereof, or of any, or either, and which of them, by all or any, or either, and which of such persons; of whose hand-writing is your name, now appearing to be subscribed or endorsed as a witness thereto respectively? Declare, &c.

Lastly.—Do you know, or can you set forth any other matter or thing which may in any wise tend to the benefit of the complainants, or any, or either of them, in this cause?(1) If so, set forth the same, and all the particulars and circumstances thereof, according to the best of your knowledge, remembrance, and belief.

ORDER FOR SIMULTANEOUS DELIVERY OF INTERROGATORIES.

(Title.)

At, &c.

A petition having heretofore been presented to this court on behalf of the

(1) The English commissioners proposed, that in lieu of the clause tending to the benefit of, &c., the following words should be used. "Material to the subject of this your examination."

defendant in this cause, for a simultaneous delivery of the interrogatories to be annexed to the joint commission ordered to be issued for the examination of witnesses in this cause, on reading and filing such petition, and upon hearing Mr. Murray Hoffman in support of the same, and Mr. Charles Graham in opposition thereto, it is ordered, that the complainant serve upon the defendant's solicitor the direct interrogatories proposed by him to be administered to the witnesses on his part to be annexed to such commission, and the defendant serve upon the complainant's solicitor the direct interrogatories proposed to be administered to the witnesses on his part to be annexed to such commission in six days from the date of this order; and that each party do serve upon the solicitor of the adverse party the cross-interrogatories proposed by him to accompany such commission within ten days from the date of this order, and that both parties do attend the vice-chancellor at his chambers, on the twenty-fourth day of June instant, at nine o'clock in the forenoon, for the settlement of all such interrogatories, as well direct as cross, as may be served by the parties respectively.

No. 161.—Page 481.

INSTRUCTIONS TO COMMISSIONERS.

1. The commission will not be opened until the time of attendance next provided for.(1)
2. The commissioner to whom the commission is delivered, will cause a written notice to be given to the other commissioners named in the direction, of a day, hour and place, for the execution; the service of which notice must be not less than *eight* days prior to such time.(2)
3. No oath need be taken by the commissioners.(3)
4. On the day appointed, those who attend will proceed to execute the commission; and in case any do not attend, a minute will be made at the head of the depositions, to the following effect: "We [*I*] certify, that on this day of at the house of being the day and place appointed for executing the commission to us (*me*) with *others* directed, *we* attended to execute the same, and that J. T. and L. M., named in such commission, neglected to attend, due notice of the said time and place having been given them, as appears by the affidavit of J. C. hereto annexed." If absent or sick, the fact should be stated:(4)
5. One commissioner may act, if the rest do not attend.
6. The oath to be administered is as follows—the witness laying his hand upon and kissing the gospels:

(1) Fowler's Ex. Pr. 83. The commission and interrogatories were, in a case within my knowledge, enclosed in an envelope directed to all the commissioners, and that enclosed with the instructions in another envelope, directed to the plaintiff's leading commissioner.

(2) Treatise, ante, p. 478.

(3) Ante, p. 478.

(4) Rule 70. In *Barclay v. Barker*, on a commission to take an answer, it was executed by two, with a certificate that the third commissioner had removed to another state.

- I. You do solemnly swear, that the answers given by you to the interrogatories which shall be proposed to you, shall be the truth, the whole truth and nothing but the truth. So help you God. Or, if the witness desire it,
- II. "You do swear, in the presence of the ever living God, that the answers, &c." While taking this oath, the witness may or may not hold up his hand, in his discretion.
- III. If the witness declare that he has conscientious scruples against taking any oath, or swearing in any form, it will be as follows—"You solemnly, sincerely and truly declare and affirm, that the answers, &c."
- IV. If the witness have any peculiar mode of swearing connected with, or in addition to, the laying his hand upon the gospels and kissing the same, which in his opinion is more solemn and obligatory, such mode of swearing him may be adopted.
- V. If a witness believe in any other than the christian religion, he shall be sworn according to the peculiar ceremonies of his religion, if there be any such ceremonies, instead of the modes above prescribed. (In such case the commissioners will certify the manner in which the oath has been administered, the religion of the witness, and that the mode pursued is the usual and most solemn form in which oaths are most usually administered to witnesses professing such religion.)(1)
7. The commissioners shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.
8. The heading or title of the depositions should be in the following manner.

"Depositions of witnesses produced, sworn (or affirmed) and examined, the day of in the year at under and by virtue of a commission issued out of the court of chancery of the state of New-York, in a certain cause therein depending and at issue between J. K., complainant, and J. F., defendant.
- A. B. of the city of in the state of merchant, aged years, being duly and publicly sworn (or affirmed) and examined on the part of the plaintiff, doth depose and say as follows :

First.—To the first interrogatory he saith—
Second.—To the second interrogatory he saith—
To the first cross-interrogatory he saith—

When the deposition is finished, it should be subscribed by the witness, and certified as follows :

Examination taken, reduced to writing and sworn to, this day of before	}	Commissioners."
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9. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall in like manner be subscribed by the witness proving the same, and shall be certified by the acting commissioners in the following manner.

(1) This was the certificate in *Ormychund v. Barker*, 1 Atk. 21.

"At the execution of a commission for the examination of witnesses, between J. R., complainant, and J. T., defendant, this paper writing was produced and shown to M. A., a witness, and by him deposed to, before

J. B. }
L. M. } Commissioners."

10. The commissioners shall subscribe their names to each sheet of the depositions taken by them.

11. If an interpreter is employed, one of the commissioners will administer to him the following oath.

"You do solemnly swear that you will truly and faithfully interpret the oath and interrogatories to be administered to J. D., a witness now to be examined, out of the English language into the Spanish language, and that you will truly and faithfully interpret the answers of the said J. D. thereto, out of the Spanish into the English language."

12. The commissioners will endorse on the back of the commission the following return.

"The execution of this commission appears in certain schedules hereunto annexed.

A. M. }
C. D. } Commissioners.

13. The commissioners will fold the depositions, commission, interrogatories, exhibits and instructions in a packet, and bind it with tape. They will set their seals at the several meetings or crossings of the tape, endorse their names on the outside, and direct it thus—"To ——— Esquire, [Register](1) of the court of chancery, of the state of New-York, [Albany.]

14. If there is a direction on the commission to return the same by mail, they shall immediately deposit the packet so directed in the nearest post-office, and endorse thereupon, "Deposited in the post-office at this day of by me, A. B., Commissioner."(2)

15. If there is no such direction, the commissioners will deliver it to such person as the agent of the plaintiff shall designate, or to some other person coming to the [city] of [New-York.]

16. They will instruct such messenger, that he will be required, on his arrival, to take an oath, "that he received the commission from A. B., one of the commissioners, and that it hath not been opened or altered since he received it;" and that he is to deliver it to the officer to whom it is addressed.

17. The commissioners may employ a clerk to copy the depositions, if they think proper. If a copy of the original draft is made, care must be taken that the witnesses sign such copy. One of the commissioners should however, take down the testimony.(3)

(1) Or Assistant Register, or Clerk, as the case may be.

(2) Statute—2 R. S., p. 394.

(3) It has been decided, that it is immaterial in whose hand, that of the commissioner or clerk, the depositions are taken. It was provided in an Irish statute, cited Bridgman's Eq. Digest, 241, that the examiner and commission examiner therein appointed should take down the depositions with his own hand.

(If notice is directed to be given to an agent.)

18. The commissioner receiving the commission will also cause a written notice of the time and place of execution to be served upon C. M., of agent of the defendant, at least eight days before the time of execution. In case of the death or absence of the said C. M., they will cause such notice to be served upon J. N., of, &c., as such agent; and in case of the death or absence of both, they will proceed to execute the commission, taking an affidavit of such death or absence, and will annex the same to their return. If either agent is served, and does not attend, an affidavit of service must be made and annexed as aforesaid.

No. 162.—Page 481.

OATH OF MESSENGER.

(Title.)

State of New-York, }
 County of } ss. A. B., being duly sworn, doth depose and say, that he received the commission now handed by him to I. W., assistant register of this court, endorsed with the names of L. B. and C. P., commissioners, from the said L. B.; and that such commission, and the package containing the same have not been opened or altered since he so received them.

No. 163.—Page 482.

LETTERS ROGATORY.

[L. S.] State of New-York. ss.

The People of the state of New-York,

To any judge or tribunal having jurisdiction of civil causes at Havana, greeting: Whereas a certain suit is pending in our court of chancery, in which W. K. is plaintiff, and J. T., &c., are defendants; and it has been suggested to us that there are witnesses residing within your jurisdiction, without whose testimony justice cannot be completely done between the said parties, we therefore request you, that in furtherance of justice you will by the proper and usual process of your court, cause such witness or witnesses as shall be named, or pointed out to you by the said parties, or either of them, to come before you, or some competent person by you for that purpose to be appointed and authorized, at a precise time and place, by you to be fixed, and there to answer, on their oaths and affirmations, to the several interrogatories hereto annexed; and that you will cause their depositions to be committed to writing, and returned to us under cover, duly closed and sealed up, together with these

presents. And we shall be ready to do the same for you in a similar case, when required.

Witness, Reuben H. Walworth, our chancellor, at the city of New-York, this day of

No. 164.—Page 485.

ORDER FOR EXAMINATION OF A PARTY AS A WITNESS.

(Title.)

At, &c.

On filing an affidavit of C. M., one of the above named complainants, setting forth that the defendant I. T. is a material witness for him in this cause, and is not interested in the matter to which he is to be examined, and notice of an order to examine witnesses having been given on the day of instant, on motion of, &c., it is ordered, that the said complainants may examine the said J. S. as a witness to any matter to which he is not interested, subject to all just exceptions.

No. 165.—Page 499.

ARTICLES TO DISCREDIT WITNESSES.

Articles exhibited by A. B., complainant, in a certain cause now depending and at issue in the court of chancery, wherein the said A. B. is complainant and C. D. defendant, to discredit the testimony of E. F., G. H., and J. K., three witnesses examined before L. H., Esq., one of the examiners of the said court, on the part and behalf of the said defendant.

1st. The said A. B. doth charge and allege that the said E. F. hath, since his examination in the said cause, owned and acknowledged, that he is to receive or be paid, and also that he doth expect a considerable reward, gratuity, recompense, or allowance from the said defendant, in case the said defendant recovers in the said cause, or the said cause be determined in his favour, and that the said E. F. is to gain or lose by the event of the said cause.

2d The said A. B. doth charge and allege, that the said G. H. and J. K. are persons of bad morals, and of evil fame and character, and that they are generally reputed and esteemed so to be, and that the said G. H. and J. K. are persons who have no regard to the nature or consequences of an oath, and that they are persons whose testimony is not to be credited or believed.

J. R., Solicitor.

No. 166.—Page 489.

ORDER TO EXAMINE TO CREDIT.

(Title.)

At, &c.

A motion having been this day made to this honourable court for liberty to examine witnesses as to the credit (*or competency*) of A. M., as a witness, heretofore examined on behalf of the plaintiff in this cause, upon articles now exhibited to this court; thereupon, on reading and filing an affidavit of J. T., a defendant in this cause, and on motion of M. H., counsel for the defendant, and hearing C. B., counsel for the plaintiff, it is ordered, that the defendant J. T. be at liberty to examine witnesses upon the said articles, before one of the examiners of this court, (residing in the city and county of New-York,) giving the usual notice of the time and place of such examination; and that the plaintiff be at liberty to examine witnesses to support the credit of the said A. M., the witness, [the names of all witnesses on each side to be delivered to the solicitor of the opposite party, or such examiner, before any examination thereupon commences.](1)

No. 167.—Page 471.

NOTICE OF USING DOCUMENTARY PAPERS AT THE HEARING.

(Title.)

Take notice, that I shall use at the hearing of this cause, as evidence on the part of the complainant, an answer of the defendant Z. P., filed by him to the bill of complaint of *The, &c.*, which answer purports to have been sworn to on the day of before C. M., then a master of this court.

Yours, &c.

To, &c.

M. M., Sol. Compl.

Order for leave to prove a paper at the hearing.

(Title.)

At, &c.

On reading and filing the petition of C. M., complainant in the above cause duly verified, (and an affidavit proving due service of a copy of such petition, with a notice that the same would be presented this day to this court,) and on motion of, &c., ordered, that the complainant be at liberty at the hearing of this cause to examine L. P., a witness, *viva voce*, to prove an agreement bearing date the day of made between the defendant of the one part, and of the other part.

(1) This rule is suggested, as in conformity with the principle of the 83d rule of court.

No. 168.—Page 488.

ORDER FOR INSPECTION OF PREMISES BY WITNESSES.

(Title.)

At, &c.

On reading and filing the petition of the above named complainants, duly verified by the oath of J. K., one of such complainants, and on hearing Mr. R. in support of, and Mr. B. in opposition thereto, it is ordered, that the defendants W. M. and J. D., do permit L. B. and T. M. to inspect the several premises and buildings, and works mentioned in the pleadings, in the occupation of such defendants, preparatory to their being examined as witnesses on the part of the complainants.

No. 169.—Page 492.

NOTICE OF HEARING.

(Title.)

Take notice, that this cause will be brought to a hearing (*on the demurrer filed therein,*) (*on pleadings and proofs, &c.*) before the chancellor at the city-hall of the city of New-York, on the Monday of next, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated, &c.
To

Yours, &c.

No. 170.—Page 493.

CASE.

(Title.)

The bill in this (*the original*) cause was filed on the day of by the above named complainants, [*or, by*] against the above named defendants, [*or, against A. B., &c.*] The answer of all such defendants except S. G. was put in on the day of and a replication filed thereto on the day of The bill was taken as confessed by the said S. G. by order, dated the day of The said complainants in such original cause having departed this life, a bill of revivor was filed on the day of by the present complainants, to which no answer being put in, the cause was ordered to stand revived by an order of court dated the day of

An order to produce witnesses was entered on the day of and an order to close the proofs on the day of and the cause stands for hearing on pleadings and proofs.

The original bill set forth, that, &c. (Abbreviate bill not to exceed one sixth of the original.)

The answer of the said defendants A. B., &c., admitted—averred, &c.
 The replication to such answer was general, in the usual form.
 The bill of revivor set forth, &c.

J. L. G., Sol. Compl.
 M. H. of Counsel

No. 171.—Page 494.

NOTES OF ISSUE.

In Chancery,
Before, &c.

J. R. &c. }
 v. } On bill pro confesso, by order of 10th June, 1831.
 J. T. &c. }

On Plea. On Demurrer.

Filed . . . 1833

On Bill and Answer. Answer filed . . . 1833.

On pleadings, } Replication filed

On pleadings and proofs, } . . of . .

On exceptions to master's report, }

On equity reserved, } Date of replication or

On rehearing, } answer filed.

On postea upon feigned issue,

No. 172.—Page 497.

ORDER FOR CAUSE TO STAND OVER TO ADD PARTIES.

{Title.}

This cause coming on to be heard, and counsel for both parties having been in part heard, and it appearing that are necessary parties to this cause, it is ordered that this cause do stand over, and that the plaintiffs be at liberty to make the said parties, either by amendment or supplemental bill as they shall be advised.

(*Canning v. Canning*, Seaton, 362.)

No. 173.—Page 505.

DECRETAL ORDER FOR FEIGNED ISSUE UPON A WILL.

At a court of chancery, held for the State of New-York,
at the city of on the day of
in the year

Present,

Vice-Chancellor
of the First Circuit.

George B., &c. &c. }
v.
E. I. }

This cause having been brought to hearing upon the pleadings and proofs therein, and having been argued by Mr. D. S. Jones, of counsel for the complainants, and by Mr. O'Connor and Mr. D. B. Ogden, of counsel for the defendant, it is ordered, adjudged, and decreed, and this court, by virtue of the power and authority thereof, doth order, adjudge, and decree, that a feigned issue be formed and tried between the parties in the said cause, by a jury of the city and county of New-York, in the superior court of the city of New-York, to inquire, ascertain, and determine, whether Joseph Idley, deceased, in the pleadings in this cause named, was of sound mind, memory, and understanding, on the third day of May, in the year one thousand eight hundred and twenty-five, and competent to devise and bequeath his real and personal estate, in and by a certain paper writing bearing date on the said third day of May, in the said year one thousand eight hundred and twenty-five, and mentioned in the pleadings in this cause, and also whether the said Joseph Idley was of sound mind, memory, and understanding, on the third day of April, in the year one thousand eight hundred and twenty-five, and competent to devise and bequeath his real and personal estate in and by a certain paper writing bearing date on the last mentioned day, and mentioned in the bill of complaint in the said cause; and whether the said Joseph Idley did, by the said last mentioned paper writing, devise and bequeath his said estate in substance, as follows: that is to say; whether he did thereby give to his wife, the defendant Elizabeth Idley, all his personal estate except his silver; whether he did thereby give his silver to his daughter Mary Ann Idley; whether he did thereby give to his said wife the income of his real estate during her life, and direct that out of the said income the said Elizabeth should, during her life, maintain and educate his daughter Mary Ann; whether he did thereby devise all his real estate, subject to the said devise of the income thereof to his two daughters Ann Eliza Bowen and Mary Ann Idley, to be divided between them upon the death of his said wife, as hereinafter mentioned; whether he did thereby order and direct that, in case of the death of the said Mary Ann Idley, before attaining the age of twenty-one years, without issue, or intestate, the part and share of his estate, which he had thereby devised to the said Mary Ann Idley, should go to the said Ann Eliza Bowen; whether he did thereby give to one Elizabeth Cogan, a legacy of fifty dollars; whether he did thereby order and direct that, upon the final division of his said estate between

the said Ann Eliza Bowen and the said Mary Ann Idley, his said estate was to be apportioned between them; that each should have an equal share thereof, after charging against the share of the said Ann Eliza the value of the two certain lots of land which he had conveyed to the said George Bowen, at the time of his marriage with the said Ann Eliza, and whether he did thereby appoint his said wife executrix thereof, and also, whether the said Joseph Idley did, at any time after the execution of the said last mentioned paper writing, revoke the same: And it is further ordered, that the solicitor, for the complainants in this suit, make up the said issues, and serve a copy thereof upon the solicitor for the defendant in this suit without unnecessary delay, and that the same shall be deemed to be assented to by the defendant, unless amendments thereto be proposed by the defendant's solicitor within the ten days after service of a copy of the said issues upon him. And it is further ordered, that it be referred to Thomas A Emmet, Esq., one of the masters of this court, to settle the said issues, in case such amendments shall be proposed, and the solicitors for the parties, complainants and defendant in this cause, shall not thereafter agree as to the form of the said issues. And it is further ordered, adjudged and decreed, that the said parties in this cause may read and refer to the pleadings and proofs in this cause, on the trial of the said feigned issues, subject, however, to all just exceptions, as to the credit or competency of the witnesses, or as to the relevancy of the matter contained in the said proofs; and all further directions are reserved until the determination of the said issues.

(A Copy.)

JOHN WALWORTH, Clerk.

Another order for a feigned issue.

At a court of chancery held for the State of New-York, at the city of Albany, on the thirtieth day of September, in the year one thousand eight hundred and twenty-four.

Present,

NATHAN SANFORD, Chancellor.

William Seymour

v.

Mary Jane Delancy and others. } This cause coming on to be heard with the exceptions to the master's report, and upon the equity reserved, and the same being argued by John V. Henry, Esq., on the part of the complainant, and by Mr. Hopkins and Mr. Dyckman, on the part of the defendants, and due deliberation being thereupon had, it is ordered that a feigned issue be made to try by a jury of the country, whether the complainant is or is not seized of an absolute estate of inheritance in the lands in the town of Newburgh, in the county of Orange, which by the articles of agreement set forth in the complainant's bill of complaint, and proved in the said cause, the said complainant had agreed to convey to Thomas Ellison, deceased, in his lifetime, and to which the said complainant claims to derive his title through James Hallett; and it is further ordered, that the said issue be tried before a jury of the city and county of New-York, at a circuit court to be held in and for the said county; that the complainant shall make up and carry down the said issue, and that the same shall be brought to trial upon the usual

notice ; and it is further ordered, that office copies of the pleadings and exhibits proved in the said cause, and of the evidence taken therein, so far as the same relates to the question of title, may be read upon the trial of the said issue, subject to all legal objections ; that either party shall be at liberty to introduce any further evidence upon the trial of the said issue, that either party may re-examine his own witnesses, and subpoena the witnesses who have been examined by the adverse party for the purpose of cross-examining them, and that all further direction be reserved until the coming in of the record and postea.

(A Copy.)

JAMES PORTER, Register.

No. 174.—Page 510.

FEIGNED ISSUE.

Supreme Court.

Pleas before the justices of the supreme court of judicature of the people of the state of New-York, at the capitol in the city of Albany, of the term of October, in the year of our Lord one thousand eight hundred and thirty-one.(1)

Present,

JOHN SAVAGE, Chief Justice.

City and County of New-York, ss.

Be it remembered, that on the day of in this term of October, before the justices of the supreme court of judicature, of the state of New-York, at the capitol in the city of Albany, comes John Doe, by his attorney and brings into the said court, before the aforesaid justices thereof, now here, his certain bill against Richard Roe, being in custody, &c., in a plea of trespass on the case upon premises, which said bill follows in the words following, to wit:

City and County of New-York, ss.

John Doe, plaintiff in this suit, by David S. Jones, his attorney, complains of Richard Roe, defendant in this suit, in custody, &c., in a plea of trespass on the case upon promises ; for that whereas heretofore, to wit, on the first day of in the year of our Lord one thousand eight hundred and thirty-one,(2) to wit, at the city and county of New-York, at the first ward of the said city, a certain discourse was had, and moved by and between the said John Doe and Richard Roe, of and concerning a certain estate of inheritance, of a certain messuage, and certain lots of land, situate, lying and being in the city and county of New-York, whereof one Joseph Idley, now deceased, was seized in fee at the time of his decease, and also of and concerning a certain paper writing, bearing date the third day of May, in the year of our Lord one thousand eight hundred and twenty-five, purporting to be the last will and testament of

(1) Term of which it is made up. See Graham's Practice, p. 231.

(2) Any day prior to the term in the caption, and after bill filed.

the said Joseph Idley. And upon that discourse a question then and there arose, and was debated between the said John Doe and Richard Roe, whether the said Joseph Idley was of sound mind, memory, and understanding, on the third day of May, in the year of our Lord one thousand eight hundred and twenty-five, and competent to devise and bequeath his said real estate, and whether he did devise and bequeath the same, in and by the said certain paper writing, bearing date the said third day of May, in the said year of our Lord one thousand eight hundred and twenty-five, and the said John Doe asserted and affirmed, that the said Joseph Idley was not, on the third day of May, in the year of our Lord one thousand eight hundred and twenty-five, of sound mind, memory and understanding, and competent to devise and bequeath his said real estate in and by the said paper writing, and that he did not devise and bequeath the same by the said paper writing; which assertion and affirmation of the said John Doe the said Richard Roe then and there wholly denied, and asserted to the contrary thereof; and thereupon afterwards, to wit, on the same day and year first above mentioned, to wit, at the city and county of New-York, and at the first ward of the same city, in consideration that the said John Doe, at the special instance and request of the said Richard Roe, had then and there paid to the said Richard Roe the sum of five hundred dollars, lawful money of the United States of America, he, the said Richard Roe, then and there undertook and faithfully promised the said John Doe, to pay to him the sum of one thousand dollars like lawful money, in case the said Joseph Idley did not devise and bequeath the said real estate in and by the above mentioned paper writing; and the said John Doe avers, that the said Joseph Idley did not devise and bequeath the said real estate, in and by the above mentioned paper writing; whereof the said Richard Roe afterwards, to wit, on the first day of September, in the year of our Lord one thousand eight hundred and thirty-one, to wit, at the city and county of New-York, at the first ward of the said city, had notice. By means whereof the said Richard Roe became liable to pay to the said John Doe, and ought to have paid to him, the said sum of one thousand dollars. Nevertheless, the said Richard Roe, not regarding his said promise and undertaking by him in form aforesaid made, but contriving to deceive and defraud the said John Doe in this behalf, hath not yet paid to him, the said John Doe, the said sum of one thousand dollars, or any part thereof, although so to do the said Richard Roe was afterwards, to wit, on the same day and year last aforesaid, and often afterwards, to wit, at the city and county of New-York, and at the first ward of the said city, requested by the said John Doe; but the same to the said John Doe to pay the said Richard Roe hath hitherto wholly refused, and still doth refuse, to the great damage of the said John Doe.

And also, for that whereas heretofore, to wit, on the first day of August, in the year of our Lord one thousand eight hundred and thirty-one, to wit, at the city and county of New-York, at the first ward of the said city, a certain other discourse was had and moved by and between the said John Doe and Richard Roe, of and concerning a certain other estate of inheritance, of a certain other message, and certain other lots of land, situate, lying and being in the city and county of New-York, whereof the said Joseph Idley, now de-

ceased, was seized in fee at the time of his decease, and also of and concerning a certain paper writing bearing date the third day of April, in the year of our Lord one thousand eight hundred and twenty-five, purporting to be the last will and testament of the said Joseph Idley, and upon that last mentioned discourse a question then and there arose, and was debated between the said John Doe and Richard Roe, whether the said Joseph Idley was of sound mind, memory, and understanding, on the third day of April, in the year of our Lord one thousand eight hundred and twenty-five, and competent to devise and bequeath his said last mentioned real estate, and whether he did devise and bequeath the same in and by the said certain paper writing, bearing date the said third day of April, in the said year of our Lord one thousand eight hundred and twenty-five, and the said John Doe asserted and affirmed, that the said Joseph Idley was, on the third day of April, in the year of our Lord one thousand eight hundred and twenty-five, of sound mind, memory, and understanding, and competent to devise and bequeath his said last mentioned real estate, in and by the said last mentioned paper writing ; which assertions and affirmations of the said John Doe the said Richard Roe then and there wholly denied, and asserted to the contrary thereof ; and thereupon, afterwards, to wit, on the same day and year last mentioned, to wit, at the city and county of New-York, and at the first ward of the same city, in consideration that the said John Doe, at the special instance and request of the said Richard Roe, had then and there paid to the said Richard Roe the other and further sum of five hundred dollars, lawful money of the United States of America, he, the said Richard Roe, then and there undertook, and faithfully promised the said John Doe, to pay to him the other and further sum of one thousand dollars, of like lawful money, in case the said Joseph did devise and bequeath his last mentioned real estate in and by the last above mentioned paper writing ; and the said John Doe avers, that the said Joseph Idley did devise and bequeath the said last mentioned real estate in and by the last above mentioned paper writing ; whereof the said Richard Roe afterwards, to wit, on the first day of September, in the year of our Lord one thousand eight hundred and thirty-one, to wit, at the city and county of New-York, at the first ward of the said city, had notice. By means whereof the said Richard Roe became liable to pay to the said John Doe, and ought to have paid to him, the said last mentioned sum of one thousand dollars ; nevertheless, the said Richard Roe, not regarding his said last mentioned promise and undertaking, by him in form aforesaid made, but contriving to deceive and defraud the said John Doe in this behalf, hath not yet paid to him, the said John Doe, the said last mentioned sum of one thousand dollars, or any part thereof, although so to do the said Richard Roe was afterwards, to wit, on the same day and year last aforesaid, and often afterwards, to wit, at the city and county of New-York, and at the first ward of the said city, requested by the said John Doe to pay the said Richard Roe, hath hitherto wholly refused, and still doth refuse, to the great damage of the said John Doe.

And also, for that whereas heretofore, to wit, on the first day of August, in the year of our Lord one thousand eight hundred and thirty-one, to wit, at the city and county of New-York, at the first ward of the said city, a certain other discourse was had and moved by and between the said John Doe

and Richard Roe, of and concerning a certain paper writing, bearing date the third day of April, in the year of our Lord one thousand eight hundred and twenty-five, and by the said John Doe alleged to be the last will and testament of the said Joseph Idley, now deceased, and upon that discourse a question arose and was debated between the said John Doe and Richard Roe, as to the purport of the said last mentioned paper writing; and the said John Doe asserted and affirmed, that the said Joseph Idley did, by the said last mentioned paper writing, devise and bequeath his estate in substance as follows: that is to say, that the said Joseph Idley did thereby give his silver to his daughter Mary Ann Idley; that he did thereby give to the said Elizabeth Idley the income of his real estate during his life, and direct that out of the said income the said Elizabeth Idley should, during her life, maintain and educate the said daughter Mary Ann; that he did thereby devise all his real estate, subject to the said devise of the income thereof, to his two daughters, Ann Eliza Bowen and Mary Ann Idley, to be divided between them upon the death of his said wife, as hereinafter mentioned; that he did thereby order and direct, that in case of the death of the said Mary Ann Idley, before attaining the age of twenty-one years, without issue, or intestate, the part and share of his estate, which he had thereby devised to the said Mary Ann Idley, should go to the said Ann Eliza Bowen; that he did thereby give to one Elizabeth Cogan a legacy of fifty dollars; that he did thereby direct, that upon the final division of his estate between the said Ann Eliza Bowen and the said Mary Ann Idley, his said estate was so to be apportioned between them that each should have an equal share thereof after charging against the share of the said Ann Eliza the value of two certain lots of land which he had conveyed to one George Bowen, the husband of the said Ann Eliza, at the time of his marriage with the said Ann Eliza; and that he did thereby appoint the said Elizabeth Idley executrix of the said will; which assertion and affirmation of the said John Doe the said Richard Roe then and there wholly denied, and asserted to the contrary thereof. And thereupon afterwards, to wit, on the same day and year last mentioned, to wit, at the city and county of New-York, and at the first ward of the same city, in consideration that the said John Doe, at the special instance and request of the said Richard Roe, had then and there paid to the said Richard Roe the other and further sum of five hundred dollars, lawful money of the United States of America, he, the said Richard Roe, then and there undertook and faithfully promised the said John Doe to pay to him the other and further sum of one thousand dollars, like lawful money, in case the said Joseph Idley did devise and bequeath his estate by the last mentioned paper writing in substance, as above asserted and affirmed by the said John Doe. And the said John Doe avers, that the said Joseph Idley did devise and bequeath his estate by the last mentioned paper writing in substance as above asserted, and affirmed by the said John Doe. Whereof the said Richard Roe afterwards, to wit, on the first day of September, in the year of our Lord one thousand eight hundred and thirty-one, to wit, at the city and county of New-York, and in the first ward of the said city, had notice; by means whereof the said Richard Roe became liable to pay the said John Doe, and ought to have paid to him the said last mentioned sum of one thousand dollars. Nevertheless,

the said Richard Roe, not regarding his said last mentioned promise and undertaking by him in form aforesaid made, but contriving to deceive and defraud the said John Doe in this behalf, hath not yet paid to him, the said John Doe, the said last mentioned sum of one thousand dollars, or any part thereof, although to do so the said Richard Roe was afterwards, to wit, on the same day and year last aforesaid, and often afterwards, to wit, at the city and county of New-York, and at the first ward of the said city, requested by the said John Doe, but the same to the said John Doe to pay the said Richard Roe hath hitherto wholly refused, and still doth refuse, to the great damage of the said John Doe.

And also, for that whereas, on the first day of August, in the year of our Lord one thousand eight hundred and thirty-one, to wit, at the city and county of New-York, at the first ward of the said city, a certain other discourse was had and moved by and between the said John Doe and Richard Roe, of and concerning a certain other paper writing bearing 'date the third day of April, in the year of our Lord one thousand eight hundred and twenty-five, purporting to be the last will and testament of the said Joseph Idley, and of and concerning the revocation thereof, by the said Joseph Idley; and upon that discourse a question arose and was debated between the said John Doe and Richard Roe, whether the said Joseph Idley had ever revoked the last mentioned paper writing in his lifetime; and the said John Doe asserted and affirmed, that the said Joseph Idley did not at any time during his life revoke the said last mentioned paper writing; which assertion and affirmation of the said John Doe the said Richard Roe then and there wholly denied, and asserted to the contrary thereof; and thereupon, afterwards, to wit, on the same day and year first above mentioned, to wit, at the city and county of New-York, and at the first ward of the same city, in consideration that the said John Doe, at the special instance and request of the said Richard Roe, had then and there paid to the said Richard Roe the other and further sum of five hundred dollars, lawful money of the United States of America—he, the said Richard Roe, then and there undertook, and faithfully promised the said John Doe, to pay to him the other and further sum of one thousand dollars, like lawful money, in case the said Joseph Idley had not at any time during his life revoked the last mentioned paper writing; and the said John Doe avers that the said Joseph Idley did not at any time during his life, revoke the last mentioned paper writing; whereof the said Richard Roe afterwards, to wit, on the first day of September, in the year of our Lord one thousand eight hundred and thirty-one, to wit, at the city and county of New-York, at the first ward of the said city, had notice; by means whereof the said Richard Roe became liable to pay to the said John Doe, and ought to have paid to him the last mentioned sum of one thousand dollars; nevertheless, the said Richard Roe, not regarding his said last mentioned promise and undertaking by him in form aforesaid made, but contriving to deceive and defraud the said John Doe in this behalf, hath not yet paid to him, the said John Doe, the said last mentioned sum of one thousand dollars, or any part thereof, although so to do the said Richard Roe was afterwards, to wit, at the city and county of New-York, and at the first ward of the said city, requested by the

said John Doe; but the same to the said John Doe to pay, the said Richard Roe hath hitherto refused, and still doth refuse, to the great damage of the said John Doe. By means of all which promises the said John Doe saith he hath sustained damage to four thousand dollars, and therefore he brings suit, &c.

And the said Richard Roe, by W. S., his attorney, comes and defends the wrong and injury, when, &c., and says that the said John Doe ought not to have or maintain his aforesaid action thereof against him, because he says, that though true it is that the said several discourses in the foregoing declaration mentioned were had and moved by and between the said John Doe and him, the said Richard Roe, wherein the question did arise as in the several counts of the foregoing declaration is respectively mentioned, and that he, the said Richard Roe, did undertake and promise, in manner and form as the said John Doe hath above in that behalf alleged: nevertheless, for plea in this behalf, the said Richard Roe saith, that the said Joseph Idley was on the said third day of May, one thousand eight hundred and twenty-five, of sound mind, memory, and understanding, and competent to devise and bequeath his real estate, and did devise and bequeath the same by the said paper writing, dated the said third day of May one thousand eight hundred and twenty-five, &c., (*traversing the several counts.*) And of this he, the said Richard Roe, puts himself upon the country, and the said John Doe doth the like, &c.

Therefore the issue above joined is ordered to be tried at the circuit court appointed to be held in the in and for the county of on the Monday of next

No. 175.—Page 510.

FEIGNED ISSUE TO TRY PARTNERSHIP.

Supreme Court.

Pleas before the justices of the people.

(See the preceding form.)

For that whereas, heretofore, to wit, on the day of a certain discourse was had and moved by and between the said J. D. and the said R. R., of and concerning one R. M., and whether the said R. M. was a partner of R. L. and one F. C. on the day of in the year of And on that discourse the said J. D. did then and there assert and affirm, that the said R. M. was a partner with the said R. L. and F. C. on the said day of in the said year of which said assertion the said R. R. then and there wholly denied. And thereupon the said R. R. afterwards, to wit, on the day of in the year of aforesaid, at the city of New-York aforesaid in consideration that the said J. D., at the special instance and request of the said R. R., had then and there paid to him, the said R. R., fifty dollars lawful money of the United States of America, undertook, and to the said J. D. then and there faithfully promised that the said R. R. would pay to the said J. D. one hundred dollars of the like lawful money of the United States of America, if the said

of in the said year of And the said J. D., in fact, says, that the said R. M. was a partner with the said R. L. and F. C. on the said day of in the said year of whereof the said R. R., to wit, on the said day of in the year of at New-York aforesaid, had notice, whereby the said R. R. then and there became liable to pay to them the said sum of one hundred dollars, to wit, at New-York aforesaid. Nevertheless, the said R. R., not regarding his said promise and undertaking by him made as aforesaid, but contriving and fraudulently intending, craftily and subtly, to defraud the said J. D. in this behalf, hath not paid to them the said sum of money, or any part thereof, although to pay the same to the said J. D., he, the said R. R., on the said day of in the year of at New-York aforesaid, was duly requested; but to pay the same, or any part thereof, to the said J. D., he, the said R. R., hath hitherto wholly refused, and still doth refuse, to the damage of the said J. D. of two hundred dollars. And therefore he brings suit, &c.

And the said R. R., by J. W. his attorney, comes and defends the wrong and injury, when, &c. And as to the promise and undertaking in the said declaration mentioned, the said R. R. says, that the said J. D. ought not to have or maintain his said action thereof against him; because, he says, that although true it is, that such discourse was had, and such promise was thereupon made by the said R. R., as the said J. D. has in his said declaration alleged; yet the said R. R. further says, that he, the said R. R., was not a partner with the said R. L. and F. C. on the said day of in the year of as by the said declaration is above supposed; and of this he puts himself upon the country, &c. And the said J. D. doth the like, &c.

Therefore the issue above joined is ordered to be tried at the circuit court, appointed to be held in and for the in and for the county of aforesaid, on the Monday of next.

No. 176.—Page 510.

FEIGNED ISSUE TO TRY THE GENUINENESS OF A DEED.

Pleas before the justices of the supreme court of judicature of the people of the state of New-York, at the of the city of of the term of

New-York, ss.

Be it remembered, that on the Monday of in the same term, before the justices of the supreme court of judicature of the people of the state of New-York, at the in the city of comes John Den, by B. R. his attorney, and brings into the said court, now here, his certain bill against Richard Fen, in custody, &c., of a plea of trespass on the case, which said bill follows in these words, to wit:

New-York, ss.

John Den complains of Richard Fen being in custody, &c., of a plea of trespass on the case ; for that whereas on the fourth day of March, in the year of our Lord one thousand eight hundred and twenty-six, at the city of New-York, and in the county of New-York, a discourse was had, and moved by and between the said John Den of the one part, and the said Richard Fen of the other part, of and concerning the title of one W. S. to certain lands in the town of Newburgh, in the county of Orange, which, by certain articles of agreement set forth in a certain bill of complaint, filed in the court of chancery of the state of New-York, by the said W. S., against the representatives of T. E., deceased, and proved in the said cause, the said W. S. had agreed to convey to the said T. E. in his lifetime, and to which the said W. S. claimed to derive title, through one J. H., and whether the said W. S. was or was not seized of an absolute estate of inheritance in the said lands, and whether a certain paper writing produced by the said complainant, before M. H., Esq., one of the masters of said court, upon the reference to him in the above cause, purporting to be a deed from H. E. S. to L. S., and to bear date on the sixteenth day of March, one thousand seven hundred and eighty-six, was executed by the said H. E. S. And upon such discourse the said John Den then and there asserted and affirmed, that the said paper writing so produced before M. H., Esq., one of the masters of the said court, upon the reference to him in the said cause, purporting to be a deed from H. E. S. to H. L. S., and to bear date on the sixteenth day of March, one thousand seven hundred and eighty-six, was executed by the said H. E. S. ; which said assertion the said Richard Fen then and there denied to be true, and then and there affirmed the contrary thereof ; and thereupon, afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said John Den, at the special instance and request of the said Richard Fen, had then and there paid to the said Richard Fen the sum of one hundred dollars, lawful money of the United States, he, the said Richard Fen, undertook, and then and there promised the said John Den, to pay him the sum of two hundred dollars, of like lawful money, in case the said paper writing was executed by the said H. E. S., as he, the said John Den, had asserted and affirmed, as aforesaid. And the said John Den, in fact, saith, that the said paper writing was executed by the said H. E. S., as he, the said John Den, had asserted and affirmed, to wit, on the same day and year, and at the place aforesaid, of which the said Richard Fen afterwards, to wit, on the same day and year, and at the place aforesaid, had notice. By reason whereof the said Richard Fen became liable to pay to the said John Den the said sum of two hundred dollars, lawful money aforesaid, to wit, on the same day and year, and at the place aforesaid, and being so liable, he, the said Richard Fen, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and promised the said John Den to pay him the said sum of money, when he, the said Richard Fen, should be thereunto afterwards requested. Nevertheless, &c.

Plea.—And the said defendant, by W. N. D., his attorney, comes and defends the wrong and injury, when, &c., and says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he

says, that true it is that such several discourses were had and moved, and that such several questions arose and were debated between the said plaintiff and the said defendant, and that the said defendant did undertake and promise, in manner and form as the said plaintiff hath above in his said declaration alleged; but the said defendant further says, as to the sum of two hundred dollars in the first count of the said declaration mentioned, the said paper writing in the said first count mentioned, was not executed by H. E. S., in the said first count mentioned, as the said plaintiff hath in the said first count above alleged, and of this the said defendant puts himself upon the country, and the said plaintiff doth the like, &c. Therefore, &c.

[There were other counts in this declaration, as to length of possession, &c., which it is thought unnecessary to set out.]

No. 177.—Page 513.

POSTEA, OR TRIAL RECORD.

[Copy the Circuit Roll—ante, No. 174.]

And afterwards, that is to say, on the day and at the place aforesaid, before the honourable O. E., one of the circuit judges of the state of New-York, according to the form of the statute in such case made and provided, came the within named John Doe, by his attorney, and the within named Richard Roe, by his attorney, and the jurors of the jury, whereof mention is within made, being summoned, also come; who, to say the truth of the matter within contained, being chosen, tried and sworn upon their oath say.—[The rest of the postea will vary according to the issue. The clerk of the circuit will give the attorney the panel and minutes of the trial, which should be annexed to the postea.] In *Seymour v. Delancey*, the postea was special on the several counts. For example, as to the first, it ran thus:—as to the first issue within joined, between the parties aforesaid, they say, that the said paper writing in the first count of the plaintiff's declaration mentioned, purporting to be a deed from H. E. L. to H. L. L., and to bear date the sixteenth day of March, seventeen hundred and eighty-six, was executed by the said H. E. L.; and they assess the damages of the said plaintiff, by occasion of the non-performance of the promise and undertaking of the said defendant in the said first count within mentioned, at two hundred dollars.

No. 178.—Page 515.

CERTIFICATE OF JUDGE.

I, O. E., circuit judge of, &c., before whom the within issue was tried, do certify that I am satisfied with the verdict of the jury rendered therein.

Dated, &c.

NOTICE OF HEARING ON POSTEA.

(Title.)

Take notice, that this cause will be brought to a hearing on the postea in the feigned issue tried therein, and for further directions thereupon, at a court to be held at the *City Hall*, in the city of *New-York*, on the *fourth* Monday of *May* next, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Yours, &c.

To, &c.

Sol'r.

MASTER'S SUMMONS OR WARRANT.(1)

(Title.)

By virtue of an order of reference in this cause, dated on the 12th day of March, 1833, I do appoint the 15th day of March, 1833, at three o'clock in the afternoon of that day, at my office in street, in the city of Albany, to consider of the matters referred; at which time and place all parties concerned, or some one for them, are to attend.

Dated, 12th day of March, 1833.

J. R., Master in Chancery.

Underwriting.

To proceed upon the exceptions to the defendant's answer—[or whatever else is the object of the reference.]

I direct that the above summons be served on the defendant, or his solicitor, two days previous to the day appointed.

J. R., Master in Chancery.

(Title.)

C. T. H., student at law in the office of J. T. B. Van V., being duly sworn, deposeseth and saith, that on the 12th of March, instant, he personally served on H. G. W., defendant's solicitor, a copy of the annexed summons, by leaving the same with him, and showing to him the original summons; and further saith not.

Sworn this day of &c.

C. T. H.

Commissioner, &c.

(1) Form used by J. Rhoades, Esq.

No. 181.—Page 524.

FORM OF ACCOUNTS UNDER THE 107th RULE, AND OATH.

(Title.)

The account of the defendant J. T., administrator of the personal estate of H. B., named in the pleadings, produced and exhibited before B. C., the master to whom this cause stands referred, pursuant to a decretal order made therein, dated the day of

<i>Dr.</i> <i>J. T., administrator of H. B., deceased, in account</i>		<i>Cr.</i>
1826.	1826.	
Ap. 5, To cash, to credit of interest in Union Bank	\$4,800	Ap. 10, By cash for funeral expenses, to wit,
" 5, Cash from sale furniture	900	(Set forth the items.)
		May 4, Amount of debt on note to C. D.
		\$450

Affidavit to the accounts.

(Title.)

State of New-York, }
City and County of New-York, } ss.

J. T., one of the defendants in this cause, and the administrator of H. B., named in the pleadings, being duly sworn, deposes and saith, that the schedule of account hereto annexed, marked A, does contain, to the best of this deponent's knowledge and belief, a just and true account of all such sum or sums of money as have been received by this deponent, or by any person or persons by his order, or for his use, out of, or on account of the estate of the said H. B.; and that this deponent hath not, nor hath any person or persons to his use, or by his order, received any other or further sum of money, out of, or on account of the said estate, than what are set forth in such schedule. And this deponent further saith, that the several sums of money mentioned in such schedule to have been paid or allowed, have been really and bona fide paid or allowed by this deponent. And this deponent verily believes that the items, both on the debit and credit side of such schedule, are correct. And further, that he does not know of any error or omission in the account contained in such schedule, to the prejudice of any of the other parties in this cause.

No. 182.—Page 525.

INTERROGATORIES UNDER 107th RULE.

(Title.)

Interrogatories to be exhibited to L. G. and F. L. G., the defendants in this cause, touching the accounts produced by them to B. Clark, the master to whom this cause stands referred.

First Interrogatory.—Was there not a legacy of £ or thereabouts, and of what amount, left and bequeathed by T. G., of B., in the kingdom of Great Britian, to J. G., the intestate in the pleadings named; upon whose estate you administered? Have you received the amount of such legacy, or any part thereof, and when was the same or such part thereof received? And if the whole has not been received, why have you not collected the same, or such part thereof as may remain unpaid? Answer fully.

Second Interrogatory.—Did you not on or about the draw a bill of exchange for £30 sterling upon A. G., administratrix of said T. G., for the interest due upon such legacy? Was not the said bill bought of you, and did you not receive the sum of \$ or some other, and what sum therefor; and was not such bill duly paid? Answer fully.

No. 183.—Page 525.

SURCHARGE UNDER 107th RULE.

(Title.) The surcharge of the complainants to the accounts brought in before B. Clark, the master to whom this cause stands referred, by L. G. and F. G., the defendants.

- | | |
|--|--------------------|
| 1. This sum being the interest on Sandford's bond, payable 15th July, 1816, omitted in schedule G. | \$280 |
| 2. This sum being the amount of a legacy left to J. G. the elder, by T. G., of Great Britian, with which the defendants should be charged, | 444 |
| Interest thereon. | |
| &c. &c. | R. G., Sol. Compl. |

No. 184.—Page 526.

ORDER UNDER THE 128th SECTION OF STATUTE UPON BILL PRO CONFESSO.—
COMPLAINANT ABSENT.

(Title.) At, &c.
On reading and filing the petition of J. C., of counsel for the complainants, dated this day, from which it appears that all the parties to this suit, complainants and defendants, reside out of this state; that the object of the bill is to obtain payment and satisfaction of certain moneys alleged to be due on a certain bond therein mentioned, executed by the father of the defendants, and assigned to the complainants as guardian of N. W. and E. W., from the real estate descending to said defendants as heir at law, and that said

bill has been regularly taken as confessed by all of the defendants for want of an appearance in this cause, and on motion of Mr. C., of counsel for the complainants, it is ordered that it be referred to one of the masters of this court residing in the city of Albany, to take proofs of the facts and circumstances stated in said bill of complaint, and to compute and ascertain the amount due to the complainants for principle and interest on said bond; and it is further ordered, that the complainants be examined as to any payments that may have been made to them, or either of them, or to any person for their use, on account of the demand mentioned in said bill of complaint, and which ought to be credited thereon. And it is further ordered, that if said master shall be of opinion that it is necessary or proper that a commission should issue to examine witnesses and the said complainants touching the matter aforesaid, that a commission be issued accordingly to such person or persons as such master shall direct, and that the testimony which shall be taken by virtue of such commission, be received by such master as evidence without requiring said complainants and witnesses to be examined personally before him. And said master is hereby required to report such proofs to this court, and to report upon the other matters hereby referred to him without unnecessary delay.

(Copy.)

JAMES PORTER, Register.

 No. 185.—Page 526.

COMMISSION UNDER THE ABOVE ORDER.

(See post, No. 195.)

 No. 186.—Page 526.

INTERROGATORIES FILED UNDER THE ORDER, No. 184.(1)

Interrogatories to be administered to C. W. and H. H.,
the complainants in the above entitled cause, and to
each of them.

First.—Have there been any payments or payment, on account of the said bond now shown to you and marked "A," or on account of either principal or interest, by the said W. S. W. in his lifetime, or by his heirs, executors, or administrators, or any or either of them, or by any other person or persons to the complainants in this cause, or either of them, or to any person or persons, for their use, within your knowledge, on account of the said bond, and which ought to be credited on that account, except such as appear to

(1) The commission in this case was for the examination of witnesses, as well as of the complainant. I have not deemed it necessary to insert the interrogatories for the witnesses.

be endorsed upon said bond? And is not the whole of the residue of principal and interest, deducting such endorsements only, justly and equitably now due, upon said bond, or what other sum in particular, or if any further allowance or deduction ought justly to be made, state the same particularly and specially? Declare your knowledge and belief, with the reasons of your belief.

H. C., Sol'r. for Compl'ts.

J. A. C., of Counsel.

I approve of the preceding interrogatories.

Filed.

J. R., of Albany, Master in Chan'y.

J. P., Register.

No. 187.—Page 526.

CLAUSE FOR PRODUCTION OF BOOKS AND EXAMINATION OF PARTIES.

And for the better taking the accounts and discovery of the matters aforesaid, the parties are to be examined upon interrogatories, and to produce upon oath before the master, all books, papers and writings in their custody or power, relating thereto, as the said master shall direct.

No. 188.—Page 529.

INTERROGATORIES FOR EXAMINATION OF A PARTY.

In Chancery.

Between A. M. W., Plaintiff,
and

J. W. and R. F., Defendants.

Interrogatories exhibited on the behalf of the above named complainant A. M. W., before B. C., one of the masters of this court, to whom this cause stands referred for the examination of the defendant, R. F., the executor to the will of J. J., the testator in the pleadings of this cause named, pursuant to the decree made on the hearing of this cause, bearing date the day of June, 1830.

First Interrogatory.—Whether or not was J. J., deceased, the testator in the pleadings named, at the time of his death, possessed of or entitled to, or interested in any and what goods, chattels, and personal estate, and effects not specifically bequeathed by his will, [*and over and above what you have already given an account of, in and by the answer put in by you in this cause*] as you know, or for any and what reason believe? If yea, set forth a full, true, and just inventory and account of all such personal estate and effects, and every part thereof, and of all the particulars whereof the same consisted, and the quantity, qualities, and the full and true values of all such particulars, according to the best of your knowledge, remembrance and belief.

Second Interrogatory.—Whether or no have you, or any and what person and persons by your order, or for your use, possessed or received all or any, and what part of the personal estate and effects of the said testator? [*over and above what you have already given an account of, in and by the answer put in by you in this cause.*] If yea, set forth a full, true, and particular account of all such personal estate and effects, distinguishing the several particulars thereof, together with the names of the person or persons by whom the same and every part thereof was or were so possessed of and received, and all the particulars relating thereto.

Third Interrogatory.—Have or hath you, or any and what person or persons by your order, with your privity or consent, paid, applied, or disposed of, all or any, and what part or parts of the personal estate and effects of the said testator, in and by the preceding interrogatories mentioned and inquired after? [*over and above what you have already given an account of, in and by the answer put in by you in this cause.*] If yea, set forth a full, true and particular account of all such personal estate and effects so paid or disposed of, distinguishing in such account the times when, and the names of the persons by, and to whom, and for what the same, and every part thereof, have or hath been so paid, applied, or disposed of, and all the particulars relating thereto, fully and at large, according to the best of your knowledge, remembrance and belief.

Fourth Interrogatory.—Whether or no was the testator, J. J., in the pleadings named, at the time of his death seized or possessed of, or entitled to, or interested in, any and what freehold, or leasehold estate, held for lives or years, not specifically bequeathed by his will, [*over and above what you have already given an account of, in and by the answer put in by you in this cause,*] as you know, or for any and what reason believe. If yea, set forth a true and just rental and account of all such estates respectively, distinguishing such parts as are freehold, and such parts as are leasehold, and where the same are respectively situated, and in whose tenure or occupation the same respectively are, together with the names of the persons or person of whom the same are so held, according to the best of your knowledge, remembrance and belief.

Fifth Interrogatory.—Are, or is any, and what debts or debt now due or owing from the estate of the said testator J. J.? If so, set forth the particulars of such debts as now remain due and owing, and to whom, and how secured, and how much is due for principal money, and how much for the interest on or in respect of such debt or debts respectively.

Sixth Interrogatory.—Have or hath you, or any other person or persons, by your order, or for your use, at any time or times, and when, since the death of the said testator J. J., sold or disposed of any, and what part of his personal estate? If so, set forth a full, true and particular account of all the personal estate of the said testator, J. J., so sold and disposed of; and was or were such part or parts thereof, as was or were so sold or disposed of by you, or by your order, or for your use, sold and disposed of to the best advantage, and for the best price that could be reasonably gotten for

the same at the time of such sale, and when and to whom, and for what price or prices was or were the same and every part thereof respectively sold and disposed of?

Seventh Interrogatory.—Is any part of the personal estate which belonged to the said testator, J. J., at the time of his death, now unreceived or outstanding; or is or are any debt or debts, sum or sums of money, which was or were due and owing to the said testator at the time of his death, now outstanding and unreceived? If so, set forth a full, true and particular account of all such personal estate, debts, and effects of the said testator, as now remain unreceived and not got in, and in whose hands, custody, or power, all such personal estate, debts and effects of the said testator, as now remain unreceived and not got in, or any part thereof, now is or are.

Eighth Interrogatory.—Was any division ever made of all, or any, and what part of the personal estate which the said A. B. was possessed of at the time of her death? If so, when, where and in what manner, and by and between whom, and in whose presence, was such division made? Of what particulars did the personal estate so divided, consist? And was the said division fair and equal.

No. 189.—Page 529.

MASTER'S CERTIFICATE OF SETTLING INTERROGATORIES.

(Title.)

I certify, that in pursuance of the decretal order made in this cause, dated the I have settled and allowed a set of interrogatories exhibited by the complainants for the examination of J. B., a defendant in this cause, touching the inquiries directed by such decretal order. And in testimony thereof I have signed my name to the engrossment of such interrogatories filed with me. All which I certify to this court.

Dated, &c.

No. 190.—Page 533.

EXCEPTIONS TO AN EXAMINATION.

(Title.)

Exceptions taken by and on behalf of the complainants in this cause to the answer and examination of the defendant J. B. to the interrogatories filed with and settled by the master to whom this cause stands referred.

First.—For that the said examinant hath not answered the matters of the first interrogatory to the best of his knowledge, information, remembrance or belief.

Second.—For that such examinant hath not answered, to the best of his knowledge, information, remembrance or belief, so much of the second interrogatory as requires him to set forth, &c.

C. D. S., of Counsel

No. 191.—Page 533.

REPORT UPON AN EXAMINATION.

(Title.)

In pursuance of the provisions of the 106th rule of this court, I, the subscriber, the master to whom this cause stands referred, under the decretal order therein, dated the day of do certify and report—

That exceptions to the sufficiency of the examination of the defendant J. B. were filed with me on behalf of the complainant, and that I have proceeded to examine the matters of such exceptions in presence of counsel of the said parties, and have heard their arguments thereupon; and I am of opinion, and so report, that the first, second, &c., of such exceptions are well taken; and the said answer and examination of the defendant J. B. is insufficient, as to the matters of such exceptions; and I do fix (*ten*) days after this certificate shall become absolute, as the time by which a further examination must be put in to such exceptions, and the interrogatories on which the same are founded.

All which, &c.

No. 192.—Page 534.

ORDER UPON REPORT BECOMING ABSOLUTE.

(Title.)

At, &c. (No. 13.)

A certificate of B. C., the master to whom this cause stands referred, of the insufficiencies of the defendant's examination having been filed on the day of and such certificate having become absolute, as appears by an affidavit of J. M., now filed, showing that notice of such certificate being filed was served upon G. S., solicitor of the said defendant on the day of [*over eight days from entering the order* ;] thereupon, on motion of, &c., it is ordered, that the said defendant, put in a further examination to the exceptions allowed by the said master, and pay the costs of such exceptions, and the proceedings thereon, within (*ten*) days from notice of this order, or that an attachment issue against him.

CHARGES.

The charge of C. M., complainant in this cause, against the defendant J. D., as to errors and items omitted in the accounts now before the master, stated from the partnership books, and also as to sums of money paid on account of such partnership since its dissolution.

May, 1831.—This sum being, &c. \$
G. D., Sol.

Charge of a party declared entitled to a lien under a decree.
In Chancery,

M. H. and others }
v. }

Charge of the complainants.

A. O. and others. } The complainants in this cause upon the reference pending before Master Van W., to whom by an order entered in this cause it was referred, among other things, to ascertain and state the amount due for principal and interest upon the bond debt, and the several bonds and mortgages mentioned in the bill of complaint in this cause, do charge and insist as follows :

First.—That there is now due and payable to the estate of A. H., deceased, the principal sum of one hundred and twenty-five dollars, with interest on the same from the first of January, eighteen hundred and eighteen, on a certain bond executed by M. L. to E. M., and bearing date the third day of February, eighteen hundred and seven, and by the said E. M. assigned to the said A. H., on the thirtieth of December, eighteen hundred and seventeen, as mentioned in said bill of complaint.

Second.—That upon the bond and mortgage mentioned in the said bill of complaint, which severally bear date the first day of January, eighteen hundred and seven, executed by said M. L. to E. C. and by her assigned to E. M., and who assigned the same to the said A. H., deceased, there is now due to the said estate the principal sum of three hundred and fifty dollars, together with the interest thereon from the first day of January, eighteen hundred and eighteen.

And the complainants crave leave to add to, alter, or otherwise amend these their charges at any time hereafter, as they may be advised is material.

G. B. H., Sol. for Comp.

No. 194.—Page 540.

ORDER FOR A COMMISSION ON A MASTER'S CERTIFICATE.

(Title.)

At, &c. (See No. 13.)

It appearing by the certificate of one of the masters of this court, this day filed, dated the day of instant, that the defendant A. M. in this cause, hath several material witnesses named therein, to examine in relation to the matters in question, under the decretal order of reference in this cause, who reside in the county of Erie, in this state, and that the said master was of opinion that it was necessary a commission should issue for that purpose. Thereupon, on motion of, &c., it is ordered, that the defendant be at liberty to sue out a commission for the examination of his witnesses, to wit, of [*names of the witnesses*] in the county aforesaid; that due notice of this order be given to the solicitor of the plaintiffs, and that if the said plaintiffs do not join in such commission, and strike commissioners' names with the said defendant, that such defendant have such commission directed to his own commissioners.

No. 195.—Page 540.

COMMISSION UPON A MASTER'S CERTIFICATE.

The People of the state of New-York to C. I., W. S. and J. P.,
(L. S.) of the city of Philadelphia, in the state of Pennsylvania, counsellors at law, greeting.

Know that we, in confidence of your prudence and fidelity, and in pursuance of an order of the court of chancery of our state, made and entered in a certain cause pending in said court, in which C. W. and H. H. are complainants, and T. W., R. P. W. and S. P. W. are defendants, have appointed you or any two or one of you, and by these presents do give unto you or any two or either of you, full power and authority diligently to examine all witnesses produced before you or either of you, upon certain interrogatories to be exhibited to you, or such of you as shall act under this commission; and therefore we request you or either of you, that at certain days and places to be appointed by you for that purpose, you do cause the said witnesses to come before you, and then and there examine each of them upon the said interrogatories, on their respective corporal oaths, first taken before you; and that you do take such examinations and reduce them into writing; and when you shall have so taken them, you are to send the same to us in our court of chancery, without delay, directed to Julius Rhoades, of Albany, one of the masters of our said court, closed up, and under your seal distinctly and plainly set forth, together with the said interrogatories and this writ; and we do further command, that before you or either of you proceed to execute this commission, you do first take the oath first specified in the schedule hereto annexed; and we do give unto such of you full

power to administer such oath to the rest or any of you;(1) and we do command, that all and every the clerk or clerks employed in taking, writing, transcribing or engrossing the deposition or depositions of said complainants, or of any witnesses to be examined by virtue of these presents, shall, before he or they be permitted to act as clerk or clerks, as aforesaid, severally take the oath last specified in the said schedule annexed, and we do give you or either of you full power and authority to administer such oath to such clerk or clerks.

Witness, REUBEN H. WALWORTH, our chancellor, at the city of Albany, the day of in the year one thousand eight hundred and thirty.

H. C., Sol. for Compl'ts.

Register.

Schedule referred to in the preceding commission.

Oath to be taken by the commissioner.

You shall, according to the best of your knowledge and ability, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereto annexed, upon the interrogatories now produced and left with you.(1)

Sworn to, this day }
of 183 Before me, }

Oath to be taken by the clerk.

You shall, truly and faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross the depositions of all and every witness and witnesses produced and examined by the commissioners in the preceding commission named.

Sworn to, this day }
of 183 Before me, }

No. 196.—Page 545.

OBJECTIONS TO MASTER'S REPORT.

(Title.) Objections taken by F. G. and L. G., two of the defendants in this cause, to the draft of the general report of B. C. the master to whom this cause stands referred.

First.—For that the said master hath disallowed the credit taken by such defendants in schedule G. of the accounts filed with such master, of the sum of \$2511, under date of the day of 1813, which sum such master ought to have allowed as a credit to these defendants.

Second.—For that, &c.

In all which particulars these defendants object to the draft of such report, and submit that the same ought to be altered accordingly.

C. O. C., Sol'r. Def'ts.

(1) See the Treatise, p. 478, as to the necessity of this oath.

No. 197.—Page 546.

ORDER TO CONFIRM REPORT—PARTY EXCEPTING TO PART.

(Title.)

At, &c.

Upon filing the general report of B. C., the master to whom this cause stands referred, dated the day of instant, and also filing certain exceptions taken thereto on the part of the complainants, and on motion of R. G., solicitor for said complainants, it is ordered that the same be confirmed, *so far as the same is not excepted to by said complainants*, unless cause to the contrary thereof be shown in eight days from the entry of this order.

No. 198.—Page 546.

EXCEPTIONS TO REPORT.

Exceptions taken by F. G. and L. G., two of the defendants in this cause, to the *general* report of B. C., Esq., the master to whom this cause stands referred, dated the day of

First.—For that the said master—(See No. 196. Objections.)

Wherefore these defendants do except to the said master's *general* report, and appeal therefrom to the judgment of this court.

C. O. C., Sol'r.

No. 199.—Page 548.

NOTE OF ISSUE ON REPORT.

(See ante, No. 171.)

No. 200.—Page 548.

NOTICE OF HEARING ON REPORT.

(Title.)

Sir,

Take notice that this cause will be brought to a hearing for further directions upon the *general* report of B. C., the master to whom it stood referred, at the *City-Hall* in the city of *New-York*, on Monday the day of next, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

No. 201.—Page 550.

NOTICE OF HEARING ON POSTEA.

(See No. 200—inserting “upon the postea in the feigned issue tried in this cause,” instead of “upon the report, &c.”)

No. 202.—Page 551.

DECREES—INTERLOCUTORY.

To take a partnership account.

(Title.)

At, &c.

This cause having been this day brought on to be heard upon the bill of complaint filed therein, and upon the answer of the defendant J. D.—thereupon, on hearing Mr. R., of counsel for the complainant, and Mr. B., of counsel for the defendant, it is ordered, adjudged and decreed, that the partnership set forth in the pleadings in this cause as existing between the complainant and defendant, became and was dissolved by effluxion of time on the day of and it is further ordered and decreed, that it be referred to D. C., one of the masters of this court residing in the to take and state an account of the partnership dealings between the plaintiff and defendant, *from the foot of the account* stated the day of And for the better discovery of the matters aforesaid, the parties are to produce before the said master, upon oath, all books, papers, and writings in their custody, or power relating thereto, as the said master shall direct, and are to be examined upon interrogatories or otherwise, as the said master shall direct. And all further directions are reserved until the coming in of such report.

Against assets of a deceased partner.

This cause, &c. It is adjudged and decreed, that the surplus of the estate real and personal, of the testator E. B., after satisfying his funeral and testamentary expenses, and his separate debts, are liable in equity at the time of his death to the joint debts then due from the firm of B. & M., in aid of the joint estate of that firm; but without prejudice to the liability of W. M. thereto, as between the said W. M. and the testator; and it is further ordered, that it be referred to one of the masters of this court, to take and state an account of what was due at the death of the said testator from the partnership of B. & M. to the plaintiffs and the other creditors of that partnership, who shall come in and contribute to the expenses of this suit, and of what is now due in respect of such debts; and for that purpose the said master is to cause advertisements for such creditors to come in and exhibit their demands before him by a day to be fixed for that purpose, which advertisements are to be published once in each week for at least three weeks(1) in the state paper, and in a

(1) The court may direct a longer time, if necessary. 2 R. S., 183, § 106.

newspaper printed in the county of where such demands are to be exhibited; and he is to fix a peremptory day for that purpose, and such of them as shall not come in and prove their debts by the time so to be limited, shall be excluded from the benefit of the said decree, but such persons not parties to the said suit who shall come in before the said master to prove their debts, are, before they are admitted as such creditors, to contribute to the plaintiffs their proportion of the expenses of the said suit, to be settled by the master.(1)

And it is further ordered, that such master inquire whether the joint estate of B. & M. was or not sufficient for the payment of the joint debts due from the said firm at the death of such testator, such inquiry to be without prejudice to any question as to the rights of the joint creditors, in case it shall appear that at the death of the said testator the said joint estate was sufficient for the payment of the said joint debts. And the said master is also to inquire whether the plaintiffs and such other creditors as aforesaid, or any and which of them, continued to deal with B. & M., after the death of the said testator; and what sums were paid by the said M. to the plaintiff and such other creditors from the death of the said testator; and whether by such subsequent dealings or otherwise, the estate of the said testator has become discharged from any such liability as may have existed at the time of his death to the respective debts of the plaintiffs and such other creditors, or any and which of them; and what (if any thing) is due from the said testator's estate, in respect thereof. And in making such inquiries, the master is at liberty to state any special circumstances; and for the better taking, &c. [Usual directions. Ante, p. clxviii.]

Special decree to take a partnership account.

At a court of chancery held for the state of New-York at the town of Poughkeepsie, in the county of Dutchess, on the twentieth day of June, one thousand eight hundred and thirty-three.

Present, C. H. R., vice-chancellor of the second circuit.

H. H., Complainant, }

v. }

A. K., Defendant, }

A. K., Complainant, }

v. }

H. H., Defendant. }

On original bill.

On cross bill.

The above causes, the first being an original and the other a cross suit, having heretofore been referred by the chancellor to the vice-chancellor of the second circuit, to be heard and decided, and the same having heretofore been brought to a hearing by consent at chambers together, according to the agreement and stipulation of the solicitors for the respective parties upon pleadings and proofs, and upon hearing Mr. V., of counsel for H. H., and Mr. H., of counsel for A. K., and due deliberation being had thereupon, it is ordered, adjudged and decreed, and this court, by virtue of the

(1) This contribution is seldom or never enforced.

power and authority herein vested, doth order, adjudge, and decree, that the partnership mentioned in the proceedings both in the original and cross causes as existing between the said H. H. and the said A. K., was dissolved on the third day of October, one thousand eight hundred and twenty-six, subject nevertheless, to the right of H. H. to charge the said A. K. with his proportion of the advances for purchases on account of the joint concern made since such dissolution, which are specified in the schedule D, No. 4, annexed to the answer of the said H. H. to the cross bill of the said A. K., the said purchases having been made for the joint benefit of the parties, and such parts of the articles as remain unconsumed having been sold and disposed of by the agent of the said A. K., for his benefit, in the spring of the year one thousand eight hundred and twenty-seven. And it is further ordered, adjudged and decreed, that it be referred to one of the masters of the court of chancery residing in the county of Albany, to take and state an account between the said H. H. and the said A. K., touching and concerning the various matters of account in the pleadings and proofs in the said causes mentioned. That in taking said account the said master charge the said A. K., with one half of all advances and payments which the said H. H. has made for K. & H. since the eleventh day of November, in the year one thousand eight hundred and twenty-six, when said parties settled their co-partnership demands, claims and dealings, together with half of the interest on each charge or payment, from the time such payment or advance was made, and that he include in such charge against the said A. R. the claims and advances particularly set forth in schedule D, No. 4, annexed to the said answer of the said H. H. ; which said schedule purports to set forth the articles purchased by the said H. H. for K. & H., after the sixth day of October, in the year one thousand eight hundred and twenty-six. That said master, in taking and stating said account, may regard the answer of the said H. H. to the cross bill of the said A. R., as evidence in favour of the said H. H., to prove and establish his claims and advances so claimed to have been made by him for said K. & H., as to every particular in which it is responsive to any charge, allegation or interrogatory in said cross bill, and particularly that he regard and deem schedule D, No. 1, and D, No. 2, and D, No. 4, annexed to the answer of the said H. H. to said cross bill of the said A. K., and those parts of said answer which refer to said schedules, as evidence in favour of the said H. H., of the advances and payments which they purport to set forth, in every particular in which they may not be disproved or contradicted by the said A. K. by additional and competent evidences ; said answer of the said H. H. having been read upon the hearing by the counsel of the said A. K. ; and it is to be deemed as evidence for the said H. H., both in the original and cross suits, when responsive to said cross bill. That in taking and stating the said account, the said master charge the said H. H. with one half of all payments and advances made by the said A. K., for the said firm of K. & H., since the said thirtieth day of November, in the year one thousand eight hundred and twenty-six, together with one half of the interest on each charge or payment from the time such payment or advance was made. And also charge the respective parties for all co-partnership moneys, or property received, or appropriated to his own use, by either party, since the said thirtieth day of No-

venber, in the year one thousand eight hundred and twenty-six. And it is further ordered, adjudged, and decreed, that the settlements and receipts referred to in said pleadings and proofs, the first as having been made on the first day of January, in the year one thousand eight hundred and twenty-four, and the other as having been made on the thirtieth day of November, in the year one thousand eight hundred and twenty-six, be conclusive as to all matters, items, and charges, except the errors and omissions particularly specified in said cross bill, or in said answer of the said H. H. thereto, as errors or omissions in said settlements; and that the said parties shall be permitted to surcharge or falsify the accounts that constituted the particulars of said settlements, as to any matters, charges, or items specifically charged in said bill, or said answer, as errors or omissions in said settlements, but no other parts of the said settled accounts; that the said master take and state an account of the errors and omissions in the settlement so specified in the said pleadings, and proved by competent evidence, regarding such parts of said answer to said cross bill as are responsive to said cross bill, as evidence in favour of the said H. H.

And that the said master do also inquire whether any and what property or debts belonging or owing to the said firm of K. & H. is, or are yet outstanding, and do set forth a list or statement of the same in his report, or schedule thereto; and also whether any and what debts of the said firm contracted before such dissolution remain due and outstanding, and do in like manner specify the same. And that the said master do also report in whose hands the note given by the said H. H. to the said A. K. upon the settlement of the thirteenth of November, in the year one thousand eight hundred and twenty-six, for the sum of three hundred and ninety-four dollars and twenty-eight cents, now is, and what payments have been made upon the same, and when, and the amount remaining due thereon. And it is further ordered, adjudged, and decreed, that for the better taking of such accounts, the said master shall be at liberty to examine the several parties under oath, upon interrogatories, or otherwise, as he shall direct; and the said parties and each of them are to produce and leave with the said master, under oath, all books, papers, vouchers, and writings in the custody or power of such parties, or either of them, relating to such accounts. And the said master is required to make report to this court upon the matters hereby referred to him with all convenient speed. All questions of costs and further directions in the premises are reserved.

Decree for an account against executors.

(Title.)

At, &c.

This cause, &c., (ante, p. clxviii.) thereupon it is ordered and decreed, that it be referred to B. R., one of the masters of this court, residing in the of to take an account of what is due to the plaintiff, and all others the creditors of the said testator J. D., and of his funeral and testamentary expenses. And the said master is to cause advertisements, &c. (See the form, p. clxviii.) And it is further ordered and decreed, that the said master do take an account of the said testator's personal estate, come to the hands of C. B., his executor, or to the hands of any person or persons, to his use, or by his order; and the said personal estate is to be applied in payment of his debts, and fune-

ral and testamentary expenses, in a course of administration,(1) and in taking the same, such master is to make all just allowances. And for the better taking, &c. (*Usual directions, ante, p. clxviii.*)

No. 203.—Page 551.

FINAL DECREES.

For payment of money.

N. G., administrator, &c., of J. L. D.,
deceased, and M. E. L. D'Aitz, sole
legatee, &c., of the said D.,

v.

R. L. C. and P. A. J., administrator, &c.,
of J. L. R., deceased.

This cause having been brought to a hearing, for further directions upon the report made therein by Murray Hoffman, Esq., one of the masters of this court, bearing date on the second day of April last, whereby it appears, that at the date of the said report there was due to the said complainants, from the firm of J. L. R. & Son, (whereof the said R. L. C., one of the defendants, is the surviving partner,) for principal and interest arising from the estate and effects which were of the said J. L. D. at the time of his death, (of whom the complainants are the representatives,) and which then were in, or subsequently came to the hands of the said firm, the sum of twenty-four thousand five hundred and two dollars; and from the said R. L. C., individually, for the value of the stock disposed of by him as mentioned in the pleadings, after the death of the said J. L. R., together with the dividends and interest thereon, the further sum of eight thousand one hundred and ninety-four dollars, eighty cents. Whereupon, and on hearing Mr. R., of counsel for the complainants, Mr. D. B. O., of counsel for the said defendant, and Mr. J. in proper person, and due deliberation being thereupon had, it is ordered, adjudged, and decreed, that the said R. L. C., in his own right, and the said P. A. J. as administrator, and out of the assets of the estate of the said J. L. R., so far as the same, after deducting all prior claims may extend, do pay to the complainants, or to their solicitor for them, the sum of twenty-four thousand five hundred and two dollars, first above mentioned, with interest thereon from the said date of the master's report, till paid. And it is further ordered, adjudged, and decreed, that the said R. L. C., individually, and on his own sole account, do pay to the said complainants, or to their solicitor for them, the said sum of eight thousand one hundred and ninety-four dollars eighty cents, secondly above mentioned, with interest thereon from the said date of the said master's report, till paid. And it is further ordered, adjudged, and decreed, that the said R. L. C. do pay to the complainants, or to their solicitor, the costs of their suit, in this behalf to be taxed, and that in default of payment thereof, or of the said other moneys above adjudged to them as aforesaid, the complainants have their execution

(1) 2 R. S. 87, § 27. *Wilder v. Keeler*, 3 Paige, 170.

according to law. And it is further ordered, that either party be at liberty, if so advised, to apply to the court upon the footing of this decree, for an account of the assets of the said J. L. R.

For specific performance.

(Title.)

At, &c.

The exceptions taken to the report of B. C., the master to whom this cause stood referred, dated the day of having been overruled, [or, the record and postea of the trial of the feigned issue in this cause having been brought into this court and filed, together with a case made up and settled by O. E., the judge before whom the same was tried, from which it appears that the jury have found a verdict in favour of the complainants in this cause upon all the issues directed to be tried; and the cause being brought to hearing for further directions upon such record and postea, and a motion for a new trial of the said issues having been at the same time argued, and such motion having been duly considered, it is ordered, that it be, and the same is hereby denied *with costs*.](1) And it now appearing to this court that a good title can be made by the complainants to the lands and premises situate in the town of county of which, by the articles of agreement set forth in the bill of complaint, in this cause, were to be conveyed by the complainants to the defendant J. D.: thereupon, it is ordered, adjudged and decreed, and the chancellor, by virtue of the power and authority of this court, doth hereby order, adjudge and decree, that the said articles of agreement so entered into between the said complainants and the said defendant J. D., set forth in such bill of complaint and proven in this cause, be specifically performed. And it is further ordered and decreed, that the said complainants execute and deliver to the defendant a good and sufficient conveyance in fee, to be approved of by B. C., one of the masters of this court, residing in the city of New-York, in case the parties differ respecting the same, and in which conveyance all proper parties are to join, of all and singular the premises contained in such articles of agreement, and which are bounded and described as follows, to wit: All, &c. And it is further ordered, that the said defendant do, upon the tender or delivery to him of such conveyance, pay unto the said complainant the purchase money named in such articles, viz. the sum of \$ with interest thereon at the rate of seven per cent. from the day of the date of such articles.(2) [And it is further ordered, that the said defendant J. D., do pay to the complainants or their solicitor, the said sum of \$ with interest from the day of subject, however, to the abatement and reduction which may be made upon the reference hereafter directed; and that it be referred to the said B. C., master as aforesaid, to compute and report the amount due for principal and interest on such purchase money: such interest to be computed from the day of when the same ought to have been paid, according to the terms of such agreement;

(1) *Seymour v. Delancey*, 11th January, 1827.

(2) If the payment is to be simply of the purchase money and interest, I apprehend there need not be a reference to compute the amount. But this is not often the case: generally the purchaser is to pay interest and take the rents; and hence a reference is frequently necessary. In such case the clause within brackets may be adopted.

and the said master is also to take an account of the rents and profits of the said premises, received by or come to the hands of the complainants, or of any person or persons, to their order or for their use, and the master is to make all just deductions from such rent, and what shall be coming on the said account of rent shall be deducted from the amount which shall be found due for the principal and interest of such purchase money; and it is further ordered and decreed, that upon the complainants tendering or delivering such conveyance, as aforesaid, to the said defendant J. D., that he; the said defendant, do pay unto the complainants, or their solicitor, the amount which shall remain due upon the balance of such account.] And it is further ordered and decreed, that the said defendant do pay the complainants the costs of this suit to be taxed; and it is further ordered and decreed, that the said complainants have execution against the said defendant J. D., for the said sum of \$ the purchase money aforesaid, with interest from the said day of and such costs to be taxed, according to the course of the court; [or, have execution against the said defendant J. D., for the balance which upon the account aforesaid shall be found due from the said defendant J. D., after the confirmation of the master's report thereupon, with interest from the confirmation of such report, and the costs to be taxed, according to the course and practice of the court; (1) and any of the parties are to be at liberty to apply to this court, as occasion may require.

No. 204.—Page 564.

PETITION FOR A REHEARING.

(Title.)

To the honourable James Kent, Chancellor of the state of New-York.

The humble petition of J. K. and M. E. K. his wife, the above named complainants, respectfully sheweth—

That your petitioners find themselves much aggrieved by a decretal order made by your honour in the above entitled suit, on the first day of August, eighteen hundred and twenty-one, whereby it is declared that the plea pleaded by the defendant J. T., with the accompanying answer, is good in point of form, and valid in substance; and that the release in the said plea stated, is an absolute discharge of the said defendant from his obligation as surety in the bond in the bill of complaint mentioned. Whereas your petitioners are advised and humbly conceive, that the said plea is not good in form or substance, and that the said defendant ought not to be discharged from his obligation as surety in the bond in the said bill of complaint mentioned.

(1) I presume there can be no doubt that this would be a proper final decree to be docketed, although an account is to be taken, which sometimes would be protracted. A decree directing a liability for the deficiency on a mortgage is final, although the master has to ascertain it after a sale. The statute, I conceive, does not require the liquidation of the precise sum in the decree to make it a lien on land when docketed. It is enough if it is for a sum of money, the apparent amount of which may be reduced upon an account.

Your petitioners believe and charge, that the said release, which is sought by the said bill to be set aside, was obtained by fraud by the defendant J. T., and they are advised and believe, that such fraud is sufficiently charged in the said bill.

Your petitioners also aver and charge, that the said release was executed by your petitioner M. E. K. in utter ignorance of her rights; that those rights were known and concealed by the said J. T. for the sole purpose of obtaining the release and relieving the said surety and himself from his obligation to respond for all the acts of all and each of the guardians of the said M., and they are advised and believe, that those matters are sufficiently charged in and by the said bill.

That even if a formal and express charge of fraud be deemed necessary by your honour, in addition to the allegation of facts from which fraud is to be inferred, your petitioners humbly conceive, that there ought to be a rehearing to enable your petitioners to insert such charge in their said bill, in order that substantial justice may not be sacrificed to mere form.

Whereupon your petitioners humbly pray, that your honour will be pleased to vouchsafe a rehearing of the cause before your honour, your petitioners submitting to pay such costs as the court shall award, in case their complaint shall be found to be groundless.

B. R., Sol. for Compl'ts.

Certificate.

We certify that we have examined the case referred to in the foregoing petition, and are of opinion, that the decree therein mentioned is erroneous in the particulars mentioned in such petition.

J. D. } Counsel.
R. H. }

No. 205.—Page 571. n.

ORDER FOR LEAVE TO FILE A SUPPLEMENTAL BILL.(1)

(Title.)

At, &c.

Upon reading and filing the petition of the complainants, duly verified by the oath of J. D., one of such complainants, and sworn to on the day of and on motion of Mr. R., of counsel for the complainants, and hearing Mr. B., of counsel for the defendant, it is ordered, that upon such complainants making such deposit or giving such security to the defendants as is required by the 173d rule of this court, they be at liberty to file a supplemental bill in the nature of a bill of review, upon the matter stated in such petition, touching the, &c., and for relief, as they shall be advised; and further, that they be at liberty to have the original cause brought on to be reheard, and to come on at the same time with the cause upon such bill.

(1) Framed from the order in *Partridge v. Osborne.*

ENROLMENT OF A DECREE.

(Title.)

D. W. C., G. W. C., and M. F. C., the above named complainants, filed their bill of complaint in this cause, which is hereunto annexed, on the 30th day of July, 1831, before the chancellor, and thereupon a subpoena ad respondendum was issued, and served personally on the defendant J. C. C., and upon A. S., the general guardian of said defendant F. C., he being an infant absent from the state. The defendant F. C. being an infant, appeared by A. S., his guardian ad litem, duly appointed by this court for the specific purpose of taking charge of his interests in relation to the proceedings for a partition in said bill referred to; and on the day of said infant, by his said guardian, filed his answer to said bill, which is hereunto annexed.

The defendant J. C. C. being an infant, appeared by S. J., her guardian ad litem, duly appointed by this court for the special purpose of taking charge of her interests, in relation to the proceedings for a partition in said bill referred to; on the 7th day of November, 1831, an order was made by this court, authorizing the complainants to amend their bill in the manner proposed in a notice of motion, annexed to an affidavit of the complainant D. W. C., on that day presented, which affidavit is hereto annexed; on the 15th day of November, 1831, amendments to said bill were filed, which are hereto annexed; on the 26th November, 1831, the defendant J. C. C., by her said guardian, filed her answer to said amended bill of complaint, which answer is also hereto annexed. And on the 28th November, 1831, the defendant F. C., by his said guardian, filed his answer to said amended bill of complaint, which answer is also hereto annexed. On the same 28th day of November, 1831, an order of reference to Julius Rhoades, Esq., one of the masters of this court, was entered under and by virtue of the 177th standing rule of this court; said master filed his report in pursuance of said order, on the 28th day of March, 1832, which report is hereto annexed, and has been duly confirmed; on the 6th day of April, 1832, another order of reference to said master, under and by virtue of the 177th standing rule of this court, was entered, and on the coming in of said master's report under said last mentioned order, (which report was filed on the 6th day of June, 1832, and is hereto annexed;) this cause being in readiness for hearing was brought on to be heard, and a decree was made therein, and entered, which is in the words following, viz: *Copy decrec.*

Thereupon the costs of the complainants were taxed at . . . \$

The costs of the guardian ad litem of the defendant F. C. at . . . \$

And the costs of the guardian ad litem of the defendant J. C. C. at . . . \$

Whereupon said bill, answers, and reports, and such other papers filed in this cause as are required by the general rules of this court, together with the said taxed bill of said costs, are now attached together and hereto annexed, and the said final decree is signed and enrolled, according to the form of the statute in such case made and provided, the day and year in the caption of this enrolment mentioned.

R. H. W., Chancellor.

No. 207, Vol. II.—Page 2.

PETITION TO OPEN DECREE AND VACATE ENROLMENT.

[The petition set forth the object of the will, as stated in the Treatise, ante Vol. II. p. 2, and prayed as follows.]

Your petitioners, therefore, pray, that the said enrolment of such decree may be opened, with liberty for the parties in this cause, or either of them, to annex such supplemental report of the said commissioners to the papers now attached to such decree of the day of last past, together with this petition, and by amending such decree, by inserting the aforesaid lot and premises as allotted and adjudged to the said J. A. K. and M. his wife, in right of the said M., and by amending the abstract of proceeding as shall be proper, or else that such report may, by order of this court, be confirmed, and that a further decree may be entered thereupon, making the allotment and assignment of said parcel of ground to the said J. A. K. and M., in right of the said M., binding between the parties, and that such further decree may be enrolled, and such enrolment annexed to the former enrolment in this cause, that your petitioners may have such further or such other relief in the premises as shall be just. And your petitioners, &c.

(Jurat.)

Order on this petition.

Present—

At, &c.

William T. McCoun, Vice-Chancellor of the first circuit.

R. H. and others,

v.

J. A. K. and Mary his wife and others. }

Upon reading and filing a petition of the above-named defendant J. A. K., duly verified, and also a report signed and acknowledged by T. W. L., M. H. and A. F., commissioners in partition, appointed in the above entitled cause, from which petition and report it appears, that in the bill of complaint in this cause, and the decretal order made therein, on the fifteenth day of October, one thousand eight hundred and thirty-three, and the commission issued under the said decretal order, a certain piece or parcel of land and premises was set forth as parcel of the land and premises whereof partition was sought; that the said commissioners did in their allotment and division of such lands and premises consider and estimate the said lot or parcel, and did assign, allot and apportion the same unto J. A. K. and Mary his wife, in right of the said Mary, to be held by them in such right, in severalty, for equality of partition, but that in the report signed by such commissioners and filed in this court, the said lot or parcel of land was by mistake omitted, and is not in such report assigned or allotted to the said J. A. K. and Mary his wife, or to any other person or persons. And further, that such lot or parcel is also omitted in the decree, dated the fourteenth day of April last passed, docketed on the twentieth day of May last past; thereupon, on motion of Mr. Moore, solicitor for the said defendants J. A. K. and wife, and with the consent of Mr. Harrison, solicitor for the other defendants, and guardian *ad litem* of the infant defendants, and of Mr. Prime, solicitor for the complainants, it is order-

ed that such report be, and the same is hereby, absolutely confirmed. And it is further ordered, adjudged and decreed, and this court doth hereby order, adjudge and decree, that the assignment and allotment of the parcels of ground mentioned in such report, be deemed binding and effectual between the parties, and that such lot of land be held in severalty by the said J. A. K. and Mary his wife, in right of the said Mary, and the heirs of the said Mary. And it is further ordered and decreed, that such report and petition be annexed to the enrolment of the decree in this cause, and that this decree be enrolled and annexed thereto.

(Copy.)

JOHN WALWORTH, Clerk.

No. 208, Vol. II.—Page 8.

PETITION FOR LEAVE TO FILE A BILL OF REVIEW.

(Title.)

To, &c.

The petition of, &c.

That heretofore, and on or about the day of in the year your orator filed his bill in this court for the purpose of (state briefly the object of the suit.) That the answer of the defendants L. B. and C. M. having been filed, replications were filed to the same; and proofs having been taken, the cause was brought to a hearing, and was heard on or about the day of at which time a decree was made therein to the effect and substance following, to wit, (state decree.)

And your petitioner further shows that such decree has been duly enrolled: and further, that he is advised there is error in such decree, inasmuch as therein it is adjudged and decreed that, (insert the part of the decree supposed erroneous, and assign the error.)

(If the application is on the ground of newly discovered evidence, it will be here set forth.)

Your petitioner, therefore, prays, that he may have liberty to file a bill of review for the purpose of having such decree reviewed, reversed and set aside, and that no further proceedings may be taken under the same.

And your petitioner, &c.

No. 209, Vol. II.—Page 10.

BILL OF REVIEW.

1. *For errors of law.*

To, &c.

Showeth unto your honor, your orators A. B. and L. M., in the county of D., by leave of the court first had and obtained, that on or about the day of in the year W. S., of, &c., (the defendant hereinafter named,) exhibited his bill of complaint in this honorable court against your orator, and thereby set forth that, &c. (*Here insert the substance of the original bill.*)

And your orator being served with a subpoena for that purpose, appeared and put in his answer to the said bill to the effect following—(Here recite the substance of the answer.) And the said W. S. replied to the said answer, and issue having been joined, the usual rule to produce witnesses was entered and witnesses examined thereupon, and a rule to close the proofs was duly entered. The said cause was then brought on to be heard and was heard on or about the day of last, when a decree was pronounced which was afterwards entered, in which it was set forth and recited as follows, to wit: (*insert the decree*) and your orators further show, that such decree has since, and on or about the day of been duly signed and enrolled: which said decree your orators insist is erroneous and ought to be reviewed, reversed, and set aside for many apparent errors and imperfections, inasmuch as, (a) the same gives effect to the said instrument in writing claimed and set up by the said C. D. and wife, and they allege and aver that the said instrument did not, at the time of the first decree before mentioned, constitute any lien on the lands mortgaged as aforesaid to the said H. Elliott on any of the lands described in the said instrument in writing.

And for error in the decrees and orders aforesaid, your orators and orator, among other things, show that no replication having been filed to the aforesaid answers of your orator, Mitchell, and your orator, but the aforesaid suit of the said Harvey Elliott having, as to them, been brought on to a hearing on bill, and answer only those answers for all the purposes of the said suit of the said Harvey Elliott ought to have been taken as true within fullest extent, and as completely to every intent and purpose, as if the same had been fully proved by the most perfect evidence, and that the answer of the said Aaron Pell and wife, even if the same had been supported in every particular by the most complete and perfect evidence, would not have been entitled to any greater consideration or effect, than the aforesaid answers of your orator Mitchell. And your orators further show, that your orator Mitchell having in and by his said answer, among other things, insisted, that the said Aaron Pell and Maria his wife, did not hold any deed or instrument in writing for the premises, mortgaged to the complainant, Harvey Elliott as aforesaid, other than a lease for the life of the said Elizabeth Pugsley, or for the term of one year, by way of mortgage, executed by the said Caleb Pell and Martha his wife to the said Elizabeth Pugsley, on or about the year of our Lord, one thousand eight hundred and nine, and which your orator Mitchell, in and by his said answer, stated that he believed and insisted had not only become void and extinct by lapse of time, and by the death of the said Elizabeth Pugsley, but had been paid off, satisfied and discharged, and that the said Aaron Pell and Maria his wife, had not had either of them, in the right of them, or either of them, or otherwise, any valid deed, mortgage, judgment or lien of or upon the premises mortgaged to the said Harvey Elliott as aforesaid, or any part thereof, and your orators having in and by her said answer refused as in her said answer set forth to admit the said instrument in writing as a valid lien on the said premises, no decree could properly be made giving any effect to the said instrument writing as a lien on the said mortgaged premises, and more especially such decree as was made as aforesaid

(a) I have inserted the assignment of errors in the bill in *Webb v. Pell*. A reference to 3 Paige will show why these alleged errors were held insufficient.

on the second day of July, in the year of our Lord one thousand eight hundred and twenty-three, and confirmed as aforesaid.

And for further error in the said decree made the day and year last aforesaid, your orators show, that by the terms of the said instrument in writing, the same could not have any legal existence as a lien on the said mortgaged premises for any longer than one year after the date of the said instrument in writing, and no sufficient evidence was offered to extend the said lien beyond the fair import of the terms of the said instrument in writing, as against your orator and your orator Mitchell.

And for further error in the said decree, your orators and oratrix show, that the said instrument in writing, by its terms purports to bind the one undivided half part of lands therein described, belonging to Martha, the wife of the said Caleb Pell, whereas the said decree establishes the said instrument in writing as a lien on the whole of the lands mortgaged as aforesaid to the said Elliott.

And for further error in the said decree, your orators and oratrix show, that the same establishes the said instrument in writing, as constituting a valid lien on the whole premises mortgaged as aforesaid to the said Elliott, whereas the same instrument in writing is so defective and absurd in its terms, that the same never has been operative as lien on any of the lands aforesaid.

And for further error in the said decree, your orators and oratrix show, that it appeared sufficiently, and so this honorable court should have adjudged, that the monies for which the said instrument was executed had been satisfied in such a manner, that if the said instrument had at any time been a valid mortgage in fee of the lands aforesaid, or of any of them, it had ceased so to be and had become extinct by payment or satisfaction of the monies therein mentioned.

In consideration whereof, and inasmuch as such errors and imperfections appear in the body of the said decree, your orators hope that such decree will be reversed and set aside, and no farther proceedings had thereon. To the end, therefore, that the said (*usual interrogatory.*) And that for the reasons and under the circumstances aforesaid, the said decree may be reviewed, reversed, and set aside, and no further proceedings taken thereon. May it please, &c. (Prayer for *subpœna.*)

No. 210, Vol. II.—Page 11.

DEMURRER AND PLEA TO A BILL OF REVIEW.

In Chancery.

The plea and demurrer of Aaron Pell and Maria his wife, two of the defendants, to the bill of review of Elisha Webb and Betsey his wife, formerly Betsey Hinman, and Minot Mitchell, complainants.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill contained to be true in such manner and form as the same are therein and thereby set forth for plea thereunto, do say, that by the course and practice of this court, no decree ought to be reviewed or reversed by any original bill or otherwise,

than by bill of review for error apparent in the body of the decree, or upon new matter arisen since or come to the parties' knowledge after the making of such decree, or after the proofs have been closed, and by leave of the court only, wherefore and for that the said bill of review, not setting forth the pleadings, proceedings and decree truly and fully, but omitting material parts thereof, and stating other parts thereof untruly, and alleging new and foreign matter not contained in the decree, these defendants do plead the said decree, and further pleading say, that on or about the twelfth day of July, in the year one thousand eight hundred and twenty-two, Harvey Elliott, since deceased, exhibited his bill of complaints in this honorable court, against Elijah C. Pell, James E. Pell, since deceased, these defendants and Ann Aislable, Betsey Hinman and Minot Mitchell, the said Betsey and Minot being two of the above complainants, to foreclose the equity of redemption of a certain parcel of land containing twenty-six acres and thirty perches situated in the county of Westchester, which was mortgaged by the said Elijah C. Pell and James E. Pell, to the said Harvey Elliott, on the second day of May, one thousand eight hundred and twenty-one, for securing to him the payment of eight hundred dollars with lawful interest, and in which bill the said Harvey Elliott, among other things, stated and set forth that the said Elijah C. Pell and James E. Pell, were seized of the said twenty-six acres and thirty perches of land, under a certain deed of conveyance to them from Caleb Pell and Martha his wife, bearing date the thirtieth day of April, one thousand eight hundred and twenty-one, and that the said Elijah C. Pell and James E. Pell mortgaged the same to him as above mentioned, and that the said Elijah C. Pell and James E. Pell subsequently conveyed the said land to the said Betsey Hinman, subject to his said mortgage, and that the said Ann Aislable and Minot Mitchell, had acquired certain liens or incumbrances upon the said mortgaged premises by virtue of a certain judgment at law recovered by them respectively, subsequent to his said mortgage; and also, that since the date of his said mortgage, these defendants, Aaron Pell and Maria his wife, had given out and pretended that they held an instrument in writing, under seal, executed by the said Caleb Pell and Martha his wife, who were once the owners of the said property, to Elizabeth Pugsley, dated in the year one thousand eight hundred and nine, which amounted to a mortgage on the premises so mortgaged to him, the said Harvey Elliott, as aforesaid, but denying that it was a mortgage, or that these defendants held any deed or instrument for the premises mortgaged to him, except a lease for one year by way of mortgage, which had long since expired, and if these defendants held any other mortgage, the same had never been recorded, and had been satisfied and paid off, and the same not being on record, his said mortgage must have a preference. And the said Harvey Elliott, in and by his said bill, called upon these defendants to answer whether these defendants, in their own right or as trustees, held any other instrument in writing which was an incumbrance upon the said twenty-six acres and thirty perches of land, other than the lease for one year by way of mortgage, and whether the said lease was not then expired and void, and if they had any other instrument in writing by way of mortgage whether the same had not been duly satisfied and paid off, and that they should set forth the same particularly with dates, parties, registry, acknowledgments, and consideration,

and how much remained due thereon ; to which said bill these defendants being thereto required by process of subpoena appeared and answered, and by their said answer, among other things, claimed and insisted that this defendant Maria Pell, as executrix of the last will and testament of Elizabeth Pugsley, deceased, did hold, and during the time therein after mentioned had held, a certain instrument in writing or indenture of mortgage upon certain premises, including the premises mortgaged to the said Harvey Elliott as in his said bill was mentioned, made and executed by Caleb Pell and Martha his wife, under their respective hands and seals to the said Elizabeth Pugsley in her life time, which, as these defendants charged was then a lien or incumbrance upon the said land and premises mortgaged to the said Harvey Elliott, and having a preference and priority thereto ; and these defendants in and by their said answer stated that Elizabeth Pugsley above named, was the mother of the said Martha, wife of Caleb Pell, and the grandmother of this defendant, Maria Pell ; that on or about the fourteenth day of November, in the year one thousand eight hundred and nine, the said Caleb Pell and Martha his wife, being seised in right of the said M. of the said tract, piece or parcel of land and premises, of which the premises mortgaged as aforesaid to the said Harvey Elliott was a part, and being in want of a sum of money, did apply to the said Elizabeth Pugsley, and requested of her a loan of fifteen hundred dollars, and proposed to secure the repayment thereof with interest by mortgage of the said premises : that the said Elizabeth Pugsley complied with such request, and did, at or about the time last mentioned, lend and advance to the said Caleb Pell the said sum of fifteen hundred dollars on interest, and thereupon this defendant, Aaron Pell, at the request of the said parties, drew an instrument of writing, purporting to be an indenture, and intended as a mortgage in fee of the premises for the purpose aforesaid, which they, the said C. P. and M., under their respective hands and seals duly executed and delivered in the presence of these defendants, who became the subscribing witnesses thereto, and these defendants, in and by their said answer, then set forth the said instrument of writing, or indenture of mortgage, fully and at large, a copy of which is contained in the said bill of review, and made profert of the same as the court should direct, craving leave to refer thereto for greater certainty ; that these defendants, in and by their said answer further stated, that on the twenty-third day of December, in the year one thousand eight hundred and nine, the execution of the said indenture of mortgage was acknowledged in due form of law by the said Caleb Pell and Martha his wife, privately and apart from him, so as to pass real estate, before William L. Rose one of the masters in chancery of the State of New-York, as by the certificate of such acknowledgments endorsed on the said indenture, and signed by the said master, reference being thereunto had, would fully and at large appear—and they further stated, that at the time of drawing the said indenture of mortgage, the said Aaron Pell had not been accustomed to write instruments of the kind, and both he and the parties to it, as he verily believed, were ignorant of the form in which mortgages were generally drawn, and therefore it was that the aforesaid mortgage appeared, in some respects, ambiguous and informal, as these defendants were, at the time of putting in their said answer, advised by their counsel, but they ex-

pressly declared that the object and true intent and meaning of the said indenture and of the parties thereto was, that it should be and remain as a mortgage in fee of the lands and premises therein described, until the re-payment of the said sum of fifteen hundred dollars loaned as aforesaid, with lawful interest; that the same was to be payable in one year which would expire on the fourteenth day of November, 1810, and if not then paid with lawful interest annually thereafter, that on or about the said fourteenth day of November, 1810, the said Elizabeth Pugsley being desirous of making some provision for her daughter, Mary Trowbridge, demanded some of the aforesaid money for that purpose, and thereupon took from the said Caleb Pell, or from him and the said Martha his wife, a bond or obligation to the said Mary Trowbridge, for a certain part or portion of the said money, and for the residue or balance, the said Caleb and Martha his wife made and executed to the said Elizabeth Pugsley, a certain other bond or obligation bearing date the said fourteenth day of November, 1810, in the penal sum of eight hundred and fifty-six pounds eighteen shillings and four pence, conditioned to pay to the said Elizabeth Pugsley, her executors, administrators or assignees, the sum of four hundred and twenty-eight pounds nine shillings and two pence, with lawful interest, on or before the fourteenth day of November, in the year one thousand eight hundred and eleven, as by the said bond or obligation, then in the possession of these defendants, and ready to be produced as this court should direct would fully appear, that these defendants were present at the time of the transaction last mentioned, and became the subscribing witnesses to the last mentioned bond which was delivered to the said Elizabeth Pugsley, and she was permitted also to hold the said indenture of mortgage, and it was then the express understanding and agreement of the parties aforesaid, that the same should be and remain in her hands as a security still for the money mentioned in the said bond.

That before the said Elizabeth Pugsley had received payment of the said bond, or any part thereof, and on or about the twenty-fourth day of December, in the year one thousand eight hundred and eleven, she departed this life, having first duly made and published her last will and testament in writing, bearing date the twenty-first day of December, one thousand eight hundred and eleven, and therein and thereby constituted and appointed Josiah Quimby and John Merritt, executors, and this defendant, Maria Pell, executrix thereof; that the two executors declined acting as such, and thereupon this defendant Maria Pell, on the thirty-first day of January, in the year one thousand eight hundred and twelve, caused the said will to be proved before the surrogate of Westchester county, and took upon herself the burthen of the execution thereof as executrix aforesaid; that in and by the said will, the testatrix has given and bequeathed to the said Martha Pell, a legacy of two hundred pounds, and to this defendant Maria Pell, a legacy of one hundred and sixty-two pounds twelve shillings, for her use and the use of her children, and also various other legacies to several other persons, and the residue or remainder of her estate, if any there should be, to be equally divided between the said Martha Pell, Mary Trowbridge, and this defendant Maria Pell, as in and by the said will, or the probate thereof in the possession of these defendants,

ready to be produced as this court should direct, would more fully and at large appear.

That the indenture of mortgage and bond before mentioned came into the hands of this defendant Maria Pell as executrix aforesaid, and remained unsatisfied and undischarged. That out of these monies due and owing thereon, she had been willing to allow and pay to the said Martha Pell, her legacy of two hundred pounds in the said will mentioned, but the residue thereof she had claimed to be paid by the said Caleb Pell and Martha his wife, towards satisfying the legacy given to the defendant Maria Pell and her children, and without the payment of which money there were not, and had not been in her hands as executrix aforesaid, assets sufficient to pay the said legacy; that they were informed and verily believed to be true, the said Caleb Pell had become insolvent and unable personally to pay the aforesaid bond, or even the balance thereof, after deducting his wife's legacy as aforesaid, and without the benefit of the mortgage security, the defendant Maria Pell would actually lose the whole of her aforesaid legacy, or a considerable part thereof; that hearing that the said Caleb Pell and Martha his wife, intended to convey, or were about to convey, the mortgaged premises aforesaid, or some part thereof, to their sons Elijah C. Pell and James E. Pell, or to make some other disposition thereof which might be prejudicial to the mortgage security, they were advised it would be necessary to have the aforesaid mortgage entered of record, and thereupon, before any deed or conveyance was made by the said Caleb Pell and Martha his wife to the said Elijah C. Pell and James E. Pell, and on or about the twenty-ninth day of March, in the year one thousand eight hundred and twenty-one, these defendants caused the said indenture of mortgage to be registered in the records of Westchester county, in *Liber V. of Mortgages*, 174, 175, as by the said record or a minute of the entry of such registry, endorsed on the said indenture of mortgage, signed by N. S. Bates, clerk of Westchester county aforesaid, reference being thereunto had would fully appear.

And these defendants insisted and submitted to the court, that the said mortgage held by the said Maria, as executrix aforesaid, was a valid and subsisting lien or incumbrance upon the premises mortgaged to the said Harvey Elliott, as in his bill mentioned, and that these defendants were entitled to a preference and priority of payments out of the said mortgaged premises of the principal and interest, due by virtue of the aforesaid mortgage, and the said bond of Caleb Pell and his said wife, after deducting the legacy given to her in and by the will aforesaid. And these defendants further say, that the said Minot Mitchell, Betsey Hinman and Ann Aislabie, having put in their separate answers to the said bill of the said Harvey Elliott, not denying his said mortgage, and not admitting that these defendants, or either of them, had any lien on the premises mortgaged to said Harvey Elliott as aforesaid, by virtue of said instrument or indenture of mortgage before mentioned, or otherwise, and the said Minot Mitchell in his said answer, having insisted that if the said instrument or indenture ever had constituted a lien on the said premises, such lien was lost by lapse of time, and that the monies in the said instrument mentioned had been satisfied, as he believed a replication was filed to the said answer of these defendants, but not to the answer of the said Minot

Mitchell, Betsey Hinman and Ann Aislabie, or either of them, and the usual rules to produce witnesses and to pass publication were entered as between the said Harvey Elliott and these defendants, but no witnesses were examined on either side before the passing of publication therein. That the said bill of the said Harvey Elliott being taken as confessed against the said Elijah C. Pell and James E. Pell, the said cause was afterwards, and on or about the fourth day of June, in the year one thousand eight hundred and twenty-three, brought to a hearing in this honorable court upon the said bill and answers; and the bill taken as confessed as aforesaid; and upon the said hearing, these defendants offered and read in evidence, as exhibits in support of their said answer, and of the claim set up by them to a lien on the premises mortgaged to the said Harvey Elliott as aforesaid, the said instrument in writing, or indenture of mortgage in their said answer mentioned and set forth, and the certificate of acknowledgment thereof before the said master in chancery, and the minute of the registry of the said mortgage endorsed thereon, made and signed by the said clerk of Westchester county, at the time of entering the same of record as aforesaid, and also the said bond or obligation made and executed by the said Caleb Pell and Martha his wife, to the said Elizabeth Pugsley, bearing date the fourteenth day of November, one thousand eight hundred and ten, in the said answer mentioned and set forth, and likewise the probate of the said last will and testament of the said Elizabeth Pugsley, deceased, therein also mentioned, and after hearing as aforesaid, and due deliberation thereupon had, a decretal order of this court was made in the same cause on the second day of July, in the year one thousand eight hundred and twenty-three, by which, after stating that the said cause having been brought to a hearing at the last term upon the pleadings, and certain exhibits in the same referred to, and having been argued and the pleadings and exhibits being read and duly considered, it was declared, adjudged, ordered and decreed as in the said bill of review is mentioned and set forth.

And these defendants further say, that the said Harvey Elliott, and also the said Betsey Hinman, Minot Mitchell and Ann Aislabie, afterwards and before the enrolment of the said decree, petitioned this honorable court for a rehearing of the said cause, alleging in substance the same grounds or reasons for such rehearing as are now alleged in and by the said bill of review for errors in the said decree, and the said rehearing being granted, the said cause was, on or about the fifteenth day of November, in the year one thousand eight hundred and twenty-three, brought on to be reheard in this honorable court, and being fully argued on behalf of the said Harvey Elliott and of the said Betsey Hinman, Minot Mitchell and Ann Aislabie respectively, as well as on the part of these defendants, and the same being duly considered by the said court, it was afterwards and on the fifteenth day of January, in the year one thousand eight hundred and twenty-four, ordered, adjudged and decreed by this court, that the said former decree, made in the said cause on the second day of July, in the year one thousand eight hundred and twenty-three, should be and the same was thereby in all respects confirmed, and that the said Harvey Elliott and the said Minot Mitchell, Betsey Hinman and Ann Aislabie, should pay to these defendants their costs of the said rehearing to be taxed, and that so much of the money deposited by them, or either of them, under the orders

granting the rehearing as might be necessary, should be appropriated for that purpose, and paid out of court to the solicitors of these defendants. And these defendants further say, that after the confirmation of the decree, upon the rehearing as aforesaid, the said suit having become abated by the death of the said Harvey Elliott, and these defendants being desirous of proceeding on the decree aforesaid, filed their bill of revivor in this honorable court against Henry Elliott, executor of the last will and testament of the said Harvey Elliott, deceased, and against the said other parties to said suit; and such proceedings were thereupon had that afterwards, and on the fourth day of May, in the year one thousand eight hundred and twenty-four, it was ordered by this court that the said suit of the said Harvey Elliott which was abated by his death, and the proceedings therein had, should stand and be revived by and in the name of the said Henry Elliott, as executor aforesaid, against the defendants therein, and be in the same plight and condition as they were at the time of the abatement thereof. And these defendants further say, that afterwards and in pursuance of the said decretal order of the second day of July, one thousand eight hundred and twenty-three, revived as aforesaid by the further order of this court on the fourth day of May, one thousand eight hundred and twenty-four, Murray Hoffman, Esq., one of the masters of this court to whom it was referred, made a report bearing date the twenty-second day of May, in the year one thousand eight hundred and twenty-four, that there was due to this defendant Maria Pell, as executrix of Elizabeth Pugsley, deceased, for principal and interest upon the sum adjudged and decreed to her as aforesaid at the date of the report, the sum of one thousand three hundred and eleven dollars and fifty-six cents, after crediting the sum of five hundred dollars, directed to be credited as aforesaid, and that there was due to the complainant Henry Elliott, executor as aforesaid, for principal and interest upon the bond and mortgage mentioned in the bill of complaint as executed to the testator, Harvey Elliott, the sum of nine hundred and sixty-eight dollars and thirty-two cents, which said report was filed with the assistant register of this court, on the twenty-ninth day of May, in the year last aforesaid, and an order was thereupon entered by or on behalf of the said Henry Elliott, executor as aforesaid, that the said report stand confirmed, unless cause to the contrary were shown within eight days, and the same was confirmed accordingly.

And these defendants further say, that after confirmation of the said report, and pursuant to the orders and decree aforesaid, the said mortgaged premises were sold by and under the direction of the said Murray Hoffman, one of the masters of this court, for the sum of thirteen hundred dollars, and the money brought into court and paid to the assistant register thereof, as by the said master's report of sale, filed with the said assistant register, will fully appear, and which said report was duly confirmed by a further order and decree of this court. As by the pleadings, proceedings, reports, orders and decree aforesaid, enrolled and remaining of record in the office of the register of this court, at the city of Albany, may more fully appear, and which said enrolled decree, is the same decree whereof a review is sought as aforesaid, and not other or different.

All which matters and things, these defendants are ready to verify and

prove as this honorable court shall direct; and these defendants do demur against the opening of the enrolment of said decree, and for cause of demurrer, say that it doth appear that the said decree complained of by the said bill of review, was regularly had and made upon a full hearing, and afterwards confirmed upon a rehearing, when the said Harvey Elliott, as well as the complainants in the said bill of review, had a fair opportunity of correcting any errors or mistakes, if any had occurred in the said decree, and for that the pretended errors, by the complainants' said bill of review, suggested to be in the said decree, or any of them, are not errors in law, appearing in the body of the said decree whereby or by reason whereof the said decree can or ought to be revived, or in any way altered or reversed, the pretended errors assigned being calculated merely to draw again into examination matters of fact already examined in the original cause, and to bring again into question, as mere matter of judgment, whether the cause was well or ill decided.

And for that there is not any new matter alleged to have arisen since, or come to the complainants' knowledge after the making of the said decree, or after publication passed, and whereof the complainants could not by any possibility have had notice at the time of making said decree, or of the passing publication as aforesaid.

And for that it does not appear by the said bill of review, that the complainants in the said bill have any right to bring the same, or that they, or either of them, have any interest in, or can gain any thing by a review, and alter or reverse the same for any of the supposed or pretended errors therein assigned, it not appearing by the said bill that the money produced by the sale of the mortgage premises and paid into court, under and by virtue of the said decree, is more than sufficient to pay and satisfy the principal, interest and costs decreed to the said Harvey Elliott, and of right to be paid to the said Henry Elliott, his executor as aforesaid, in case the decree should be altered or reversed so far as to do away the preference of payment by the said decree given to the defendant, Maria Pell.

Wherefore, and for divers other imperfections in the said bill appearing, these defendants do demur in law to the complainants' said bill of review, and humbly pray the judgment of this honorable court, whether they shall be compelled to make any other answer thereto, and pray hence to be dismissed with costs in this behalf most wrongfully sustained.

W. T. M'COON, *Sol. for Defendants.*

BENJ. FERRIS, *of Counsel.*

General demurrer to a bill of review.

This defendant by protestation and scope of the complainants' being, as this defendant is advised, to review a decree made in this court, wherein this defendant was complainant against the now complainant, then defendant, by which it is decreed, that the sum of six hundred pounds, &c. (reciting the substance of the decree,) and whereby a perpetual injunction was granted for stay of all suits at law, touching the rent charge of in the said decree mentioned, this defendant doth demur unto the said bill of review, and for cause of demurrer saith, that by the constant settled rules of this court, no

bill of review ought to be admitted to alter, change or explain any decree of this court enrolled, unless there be either manifest error in law appearing in the body of the said decree as it is enrolled, or for some new matter of fact discovered since the decree pronounced, and that only by leave of the court on an affidavit made of the truth of that matter; and this defendant doth insist, that it doth not appear in the body of the said decree as the same is signed and enrolled, and is of record in this honorable court, that there are or is any error or errors apparent in the said decree, whereby or by reason whereof, the said decree can or ought to be reviewed or revised, and for that the pretended errors in the said bill of review set forth are not errors in law appearing in the decree, but allegations and suggestions of matters not contained in the said decree, and for that there is not any such new matter alleged or affidavit made and leave obtained from this honorable court for bringing such bill of review as is warranted by this honorable court in this case; therefore this defendant doth demur in law to the said bill of review, and doth humbly insist upon it, that the said decree, for aught appears, is well grounded and doth humbly demand the judgment of this honorable court.

No. 211, Vol. II.—Page 11.

MASTER'S REPORT ON PLEA OF DECREE IN CHANCERY.

Elisha Webb and Betsey his wife, and Minot Mitchell,

vs.

Aaron Pell and Maria his wife, Henry Elliott, executors of Harvey Elliott and Elijah C. Pell.

To the Chancellor of the State of New-York.

In pursuance of an order of this honorable court, made in the above entitled cause under and by virtue of the nineteenth of the late rules of this court, and entered in the office of assistant register on the nineteenth day of December, in the year 1829, whereby it is referred to one of the masters in this court to examine and report whether the plea of the defendants, Aaron Pell and Maria his wife, which is filed in this cause, be true—I, the subscriber, one of the masters in this court, residing in the city of Albany, do certify and report, that having been charged with the execution of said order of reference, I have looked into the complainants' bill of review, filed in this cause, and the plea of the said defendants, Aaron Pell and Maria his wife, thereto; and also into the enrolled decree referred to in said bill and plea, so far as it relates to the former decrees or orders therein referred to, and so far as it relates to matters of record in this court in the causes therein referred to other things, this cause is substantially true, excepting that in the first page of said plea, it is alleged that the bill then mentioned was filed to foreclose a mortgage given by Elijah C. Pell and James E. Pell to the said Harvey Elliott, on the second day of May, one thousand eight hundred and twenty, whereas it appears, on inspection of said bill of complaint, that said mortgage is therein alleged to have been executed on the first day of May, 1821, and excepting

also that it does not appear from the records of this court produced before me on said reference, that no witnesses were examined on either side before the passing of publication in the cause referred to, as is alleged in the seventh page of said plea.

And I do further report, that I have looked into the petition for rehearing referred to, in the eighth page of said plea, and also into the bill of review filed in this cause, and I am of opinion, and do so report, that some of the reasons alleged in the said bill of review for reversing such opinion and decree, are set forth in the petition for a rehearing; and as the plea alleges that the same grounds or reasons for such rehearing were in substance alleged in said petition for rehearing as are alleged in said bill of review, I do report that the allegation in said plea above referred to is not true.

And I do further report, as the questions arising upon the matters contained in the first allegation in said plea, are those of law and practice and not of fact, I do not conceive that they can be properly referred to a master to decide upon by an order entered under and by virtue of the nineteenth of the late rules of this court, but only by the special order of this court, for which reason I decline expressing any opinion as to the truth or falsity of that part of said plea, and pray that this my report may be taken as a full compliance with and execution of the order of reference above referred to.

Dated Albany, January 1820.

No. 212, Vol. II.—Page 26.

APPEAL TO COURT OF ERRORS.

Notice to register.

*In Chancery,
Before the Chancellor.*

The North American Coal Company, }
v.
Joshua Dyett et al. }

The defendants, Joshua Dyett and Jessy Ann Dyett his wife, hereby state to this honorable court, that they appeal, and they hereby appeal to the court for the correction of errors, from the whole decretal order entered in the above entitled cause, entered on the eleventh day of September, in the year one thousand eight hundred and thirty-seven, with the register of this court, and the said defendants pray that the same may be sent to the court for the correction of errors before the president of the senate, the senators, and the justices of the supreme court. Dated, September 28th, 1837.

Solicitor for defendants, Dyett and wife.

Of counsel for defendants, Dyett and wife.

To J. Porter, Register, &c.

Notice to solicitor.

(Copy the above appeal and add)

Sir—Take notice that the preceding is a copy of the appeal filed in the above cause on behalf of the defendant J. D. and J. A. his wife, in the office of register of this court, and that the bond required by the statute has been filed with such register duly approved; in which bond H. M. is principal, and H. W. W. and F. B. C. are sureties. Dated, &c.

To J. B.

No. 213, Vol. II.—Page 26.

BOND FOR COSTS.

Know all men by these presents, that we, H. W. W., M. H. and F. B. C., of the city and state of New-York, counsellors at law, are held and firmly bound unto the North American Coal Company in the sum of two hundred and fifty dollars, lawful money of the United States, to be paid to the said North American Coal Company, their successor or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents, sealed with our seals. Dated this twenty-eighth day of September, in the year one thousand eight hundred and thirty-seven.

Whereas Joshua Dyett and Jessy Ann Dyett his wife, have appealed to the court for the correction of errors from a decretal order of the court of chancery made and entered on the eleventh day of September instant, in a cause in which the said North American Coal Company are complainants and Joshua Dyett and others are defendants.

Now, therefore, the condition of this obligation is such, that if the above named appellants, Joshua Dyett and Jessy Ann Dyett his wife, shall diligently prosecute said appeal, and shall pay all costs and damages that may be awarded against them as such appellants therein, then this obligation to be void, otherwise to remain in full force and effect.

*Sealed and delivered
in presence of*

No. 214, Vol. II.—Page 27.

AFFIDAVIT OF SURETIES TO APPEAL BOND.

(Title.)

State of New-York,
City and county of New-York, } ss. A. B., of the city of New-York, counsel-
lor at law, and J. M., of the same place, merchant, being severally sworn,

depose and say, and first the said A. B. for himself saith, that he is a resident of the state of New-York, and a house-holder in the city of New-York, occupying the house No. in street of such city, that he is worth the sum of \$ over and above all just debts and responsibilities; and the said J. M. for himself saith, that he is, &c.

No. 215, Vol. II.—Page 29.

BOND WHERE PAYMENT OF MONEY IS DECREED.

Know all men by these presents, that we, John A. D., of the city of New-York, merchant, J. L. D. and J. H. S., of, &c., are held and firmly bound unto W. A., of the city of New-York, and James D. C. and E. M. McC., in the penal sum of two thousand six hundred and fifty dollars, lawful money of the United States of America, for which sum, well and truly to be paid, we jointly and severally bind ourselves, our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this day of June, one thousand eight hundred and thirty-five.

Whereas at a court of chancery, held for the state of New-York, at the city of Albany, on the 21st day of May, 1835, present, Reuben H. Walworth, chancellor, it was ordered and decreed, among other things, in a certain cause then depending in such court, wherein John A. D., survivor of Henry S. C., was complainant, and W. A. and F. A., impleaded with others, are defendants, that the sum of \$819 83, with the interest as therein mentioned, be paid to the solicitor of the defendants J. D. and E. McC., out of the moneys remaining in court in this cause with their costs to be taxed, and that the surplus moneys remaining in court, if any, be paid by the assistant register to the solicitor of the defendant, W. A., and that the complainants bill be dismissed with costs; and whereas the said J. A. D., complainant, hath appealed from the said decree to the court for the correction of errors: And whereas the sum of money now remaining in court is twelve hundred dollars and sixty-seven cents:

Now the condition of this obligation is such, that if the said John A. D. shall diligently prosecute such appeal, and shall pay all costs and damages which may be awarded against him therein, and in case he shall fail to prosecute such appeal, or in case the same be dismissed or discontinued, or in case such decree shall be affirmed, then, if the said J. A. D. shall and do well and truly pay and satisfy the amount directed to be paid by such decree, or the part of such amount as to which such decree shall be affirmed only in part, and also all damages which shall be awarded against the said J. A. D., the appellant, by the court for the correction of errors upon such appeal, then this obligation shall be void, otherwise of full force and effect.

No. 216, Vol. II.—Page 28.

CERTIFICATE OF APPROVAL OF BOND.

I certify, that I have approved of the form of the within bond, and also of the sufficiency of the sureties who have executed the same, that each of them is worth double the amount of the penalty of the bond, over and above all debts and responsibilities, and that the affidavit made by them is hereto annexed.

S. C., Injunction master

No. 217, Vol. II.—Page 33.

PETITION OF APPEAL.

In the Court for the Correction of Errors.

William Oscar Clason and Josephine Clason, appellants, }
 vs.
 Augustus W. Clason, respondent. }

To the Court for the Correction of Errors.

The petition of appeal of the above named William Oscar Clason and Josephine Clason, infants, under the age of twenty-one years, respectfully shows, that a decree was lately made in the court of chancery, of the State of New-York, by the chancellor, bearing date the eighteenth day of July, one thousand eight hundred and thirty-seven, in a certain cause pending in said court, whereof Augustus W. Clason was complainant, and the said William Oscar Clason, Josephine Clason, infants, and others, were defendants, in and by which said decree, it was, among other things, ordered, adjudged and decreed, that the limitation over to the survivors or survivor of the three sons, or to their children in case of death of either without issue, before a division should be made contained in the last will and testament of Isaac Clason, deceased, was not intended by the testator to refer to an actual division of the estate, after the twenty years should have elapsed, but to the time itself which had been prescribed by the said testator, when a division of the premises in question could be made according to the terms of the will. And that Isaac Starr Clason, previous to his death, was seised of an absolute and indefeasible estate of inheritance in one third of the premises, which would have descended to all his brothers and sisters, or their descendants, as his heirs at law, if it had not been previously conveyed, and that this remainder was vested in interest as a conditional fee at the time of the execution and delivery of the assignment or conveyance made and executed by the said Isaac Starr Clason to Lockwood and others, in the year one thousand eight hundred and twenty, and that the title to the same passed under the said deed executed by said Clason to Lockwood, and that the title thereto is now vested in the complainant by virtue of the subsequent conveyances thereof, stated in the said bill of complaint and master's report, and that the first

exception taken on behalf of the said infant defendants to the said master's report, be and the same is hereby overruled, which said decree of the chancellor, in so much thereof as is herein above stated and set forth, is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore, these appellants respectfully pray, that the said decree of the chancellor may be sent to the court for the correction of errors, and filed with the clerk thereof, without delay, and that so much thereof as is herein above stated and set forth, may be reversed. And that such other decree may be made by the court for the correction of errors, as shall be agreeable to equity and good conscience, and these appellants may be restored to all things which they have lost by said decree.

And these appellants, as in duty bound, will ever pray.

Dated this first day of September, 1837.

M. H., Guardian, *ad litem*, for the above
Infant Petitioners, and Solicitor.
S. A. F., of Counsel.

No. 218, Vol. II.—Page 34.

ORDER TO ANSWER PETITION OF APPEAL.

In the Court for the Correction of Errors.

At a Court for the Correction of Errors, held
at the capitol, in the city of Albany, on
the day of

(Title.)

The petition of appeal, with a transcript of the decree and minutes of hearing, having been filed in this court, on motion of Mr. R., of counsel for the appellants, it is ordered, that the respondent file his answer to the said petition in eight days after service of a copy thereof and of this order, or be precluded from answering the same.

No. 219, Vol. II.—Page 35.

ANSWER TO PETITION OF APPEAL.

In the Court for the Trial of Impeachments and the Correction of Errors.

William Oscar Clason, Josephine
Clason, and others, Appellants,

v.

Augustus W. Clason, Respondent.

The answer of the above respondent to the petition of appeal of the appellants.

This respondent not confessing or acknowledging all or any of the matters

or things to be true as in and by the said petition of appeal are contained and set forth, for answer thereunto says, that he believes it to be true that such decree, as is complained of by the appellants, was made by the court of chancery, as in the said petition of appeal is set forth; but as to the date, substance, and contents thereof, this respondent humbly craves leave to refer thereto, when the same shall be produced.

And this respondent is advised and believes, that the said decree is agreeable to equity and justice, and he humbly prays that the same be affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs, to be adjudged to this respondent.

GRAHAM, SANDFORD and MARTIN, Solicitors for Respondent.

JAMES LORIMER GRAHAM, of Counsel.

No. 220, Vol. II.—Page 36.

PETITION TO AMEND APPEAL, &c.

In the Court for the Correction of Errors.

(Title of Cause.)

To the Court for the Correction of Errors.

The petition of L. M., the above named appellant, respectfully sheweth:

That on or about the day of last past, an appeal was filed in the court of chancery, on behalf of your petitioner, in a cause depending in such court, wherein your petitioner was complainant, and the above named L. F. with C. J. and M. J., were defendants; and that a petition of appeal addressed to this court, was filed with the clerk thereof, on the day of last past.

That, by mistake, the above named L. F. was alone made respondent to such appeal and petition; whereas the rights and interests of your petitioner require that the said C. J. and M. J. should have been also parties thereto, they being entitled to an estate in remainder in the premises in question in this cause.

Your petitioner therefore prays, that he may be at liberty to amend such appeal and petition by making the said C. J. and M. J. parties; or that this court will make such other or further order in the premises as may be just.

Order upon this petition.

(Title and caption. See No. 218.)

Upon reading and filing the petition of the above named appellant, and on hearing Mr. of counsel for such petitioner, and Mr. in opposition thereto, it is ordered that this cause be remanded to the court of chancery, to the end that an order may be entered in such court for the appellant,

to amend his appeal by inserting the names of C. J. and M. J. as respondents therein, upon such terms as to the amendment of the bond already given, or upon executing a new bond as that court shall think proper. And that upon a copy of the order in the court below, under the certificate of the register or assistant register of such amendment being made, being produced and filed with the clerk of this court, this court shall be deemed repossessed of such cause; and the clerk shall thereupon amend the petition of appeal filed in this court, by adding the names of the said C. J. and M. J. as parties respondent therein.

No. 221, Vol. II.—Page 40.

PETITION TO REVIVE APPEAL.

(Title.)

To the Court for the Correction of Errors.

The petition of J. D., one of the above named appellants, and of C. R., executor of L. B., deceased, respectfully sheweth:

That the bill in this cause was filed by your petitioner and the above named L. B. That an appeal has been duly entered from the decree of the court of chancery, made in such cause, on the day of last past, and the petition of appeal, and the answer thereto, have been duly filed. That since the filing thereof, and on or about the day of last past, the said L. B. departed this life, having left a will and testament, whereby C. R. was appointed his executor. That the said C. R. has proved such will and testament, and letters testamentary have been granted to him thereupon by the surrogate of the county of New-York, and that the right and interests of the said L. B. in question in this cause, have become vested in the said C. R. as such executor. That the said C. R. is desirous of becoming a party to such appeal, as appears by his uniting in this petition.

Your petitioners therefore pray, that the said appeal may be ordered to stand revived in the name of your petitioner, the said J. D., and of C. R., executor of the said L. B., deceased, and be in the same plight and condition as it was at the time of the death of the said L. B., and that such further or such other order may be made in the premises as shall be just.

(Usual Jurat.)

CROSS APPEAL.

(Title, &c. See No. 212.)

To, &c.

The complainants in the above entitled cause, appeal (by way of cross-appeal to the appeal filed by defendants J. L. and S. B. R.) to the court for the correction of errors, from so much of the decree entered in such cause, as adjudges and declares that the assignment made by T. T., for the use of the defendant I. L., of the debt due him by J. L. was valid, and may be enforced, subject to the prior rights of the parties therein declared: and which decree is now before the said court for the correction of errors, upon the appeal of the defendants S. B. R. and J. L., from a part thereof.

CASE UPON APPEAL.—JOINT CASE.

In the Court for the Correction of Errors.

J. L. and J. his wife, and S. B. R., Appellants, }
and

The U. I. Co., Respondents. }

Joint case made by the counsel for the respective parties.

The respondents on or about the day of March, 1831, filed their bill in the court of chancery, on behalf of themselves and all others, the judgment creditors of J. L., who should come in and contribute to the expenses of the suit, stating as follows:

Original bill. That heretofore and prior to the day of February, 1829, J. L., &c., (setting out the substantive allegations of the original bill, prefacing each distinct allegation with the words—*And in such bill it was further stated.*)

Interrogatories. Such bill contained the usual general interrogatory, and especially required that the said J. L., &c., might set forth and discover, whether, &c., (the substance of the special interrogatories.)

Prayer. And in and by such bill it was prayed that the said J. L. T., A. J., &c. might be compelled, &c., (the prayer set forth.)

Injunction upon bill. The bill was sworn to, and an injunction granted, which injunction was afterwards discharged, upon the appointment of a receiver in the cause, as hereinafter stated.

Answer of J. L. The defendant J. L. filed his several answer on or about the 28th of March, 1831, in which he answered, admitting, denying, or averring, as follows, to wit:—The defendant admitted, that prior to the 27th of February, 1829, he was indebted to the complainants in a large sum of money, but denying that it exceeded the sum of \$ averring that he cannot precisely state the

amount due, &c. [The averments of the answer were then set forth in the following manner:—The defendant admitted that, &c., but said, &c. The defendant denied that, &c., and averred, &c. The defendant averred that, &c.]

J. L., the executrix of D. L., filed her separate answer, and T. A. J., the executor of D. L., filed his separate answer to such original bill. Such answers aver, in general, ignorance of the material allegations of the bill, except as to their acts and doings as such executrix and executor; and the only question in the cause, so far as they are concerned, being as to the payment of their costs, whether out of the fund, or by the respondents, it is deemed unnecessary to set forth the contents of their answers.

The defendant T. T. filed his separate answer to such bill on or about the day of in which he answered as to the material allegations of the bill, in substance, as follows, to wit: [His answer stated.]

The defendant S. B. R. filed his separate answer to such bill, in which he answered, averred, admitted and denied as follows: He admitted that J. L., &c. [Stating fully every material fact of his answer.]

Exceptions having been taken on the part of the complainants to this answer, a further answer was put in by the said S. B. R., on or about the day of in which, among other things, he answered further as follows:— That the schedule thereto annexed, marked, &c., which schedule is as follows, to wit: [Set out verbatim.]

[The other answers in the cause were set forth in the same manner.]

To these answers replications were duly filed.

On the 26th day of March, 1832, leave having been first obtained, a supplemental bill was filed by the said respondents against the said J. L., &c., whereby, after setting forth the filing and object of the original bill, it was alleged that, subsequent thereto, the trustees of, &c., had, [stating the allegations of the supplemental bill] and thereupon praying, that the defendants thereto might answer the matters charged by way of supplement, and that, &c. [the prayer of the supplemental bill.]

To which supplemental bill answers were put in by the said J. L., &c. Such answers substantially admit the facts charged in such supplemental bill.

On the 21st of November, 1832, the respondents filed a bill of revivor and supplement against M. L., F. G. and J. A., setting forth the filing and object of such original bill, and supplemental bill, the pleadings under the same; that no answer had been filed to such supplemental bill, on behalf of the defendant T. T., and that such defendant T. T. had departed this life on or about the 6th day of May, 1832, having first duly made and published his last will and testament, dated the 1st day of May, 1829, which will is fully set forth in such bill of revivor.

The defendant M. L. was afterwards struck out as a party to this bill, not having acted under such bill. Answers were put in by the others.

Afterwards, on or about the day of a further supplemental bill was filed, setting forth that, &c., and praying that, &c.; to which an answer on behalf of A. V. and J. M. L. was filed on or about the day of and a replication filed thereto.

Testimony. An order to produce witnesses having been duly entered, the following testimony was taken in the cause :

On the part of the appellants, defendants below.

On the J. L., a witness, examined on the 10th day of January, 1833, deposed as follows: [Deposition set out verbatim.] In this manner the testimony on the part of the appellants was set forth, commencing with the date of each deposition.]

The following exhibits were produced before the examiner, on the part of the appellants, and are marked Nos. 1, 2, &c.

Exhibit No. 1, referred to in the testimony of J. L. [Set out in full.]

Evidence on the part of the respondents.

E. S., a witness examined this 9th day of January, 1833, on the part of the complainants, deposeth and saith, that, &c. [The depositions on their part were then set forth.]

The following exhibits were produced before the examiner, on the part of the respondents, and are marked A, B, C, &c.

Exhibit A, referred to in the evidence of E. S.

(Copied at length)

Admissions. A consent and admission in the cause signed by the respective solicitors of the appellants and respondents was also read at the hearing, and is as follows :

It is admitted, &c.

Decree. The cause having been brought to a hearing, the following decree was made therein on the day of

*In Chancery,
Before the Chancellor.*

The U. I. Co.	}	On original and supplemental bill.
v.		
J. L. & J. his wife, &c. (all the parties.)		
The Same	}	On bill of revivor and supplement.
v.		
J. A. and T. G., executors of T. T., deceased.		
The Same	}	On further supplemental bill.
v.		
A. B. & Janett L.		

At a court of chancery held, &c.

These causes coming on to be heard upon the pleadings and proofs, and the same having been argued by Mr. Murray Hoffman on behalf of the complainants, by Mr. Reynolds on behalf of the defendant R. T., and by Mr. Butler on behalf of the other defendants, and due deliberation being thereupon had, it is ordered, adjudged and decreed, &c.

From the whole of this decree except such part as adjudges and declares Appeal. that the assignment mentioned in the second supplemental bill made by T. T. for the use of the defendant J. L. of the debt due him by J. L. was valid and might be enforced, an appeal to the court for the correction of errors was filed in the names of J. L. and J. his wife and S. B. R., and a petition of appeal was filed in this court on or about the 16th day of April, 1836, to which an answer was filed by the respondents, and the appeal duly put at issue.

The petition of appeal was as follows.

Petition.

(See ante, Form No. 217.)

The answer was as follows.

Answer.

(Ante, Form No. 219.)

The reasons of the chancellor for such decree are as follows.

Opinion
of chan-
cellor.

The Chancellor.—The complainants, &c. (See 18 Wendell, 240.)

Another case.

In the Court for the Correction of Errors.

John S. Barheydt, *Appellant*,

v.

Jacobus Barheydt, Alida Van Dyck, Jeronimus Barheydt, Mary Clow, John Wemple and Helen his wife, Evert Wynkoop and Jane his wife, late Jane Barheydt, Samuel Whitney and Sarah his wife, late Sarah Barheydt, John Swart and Lydia his wife, late Lydia Barheydt, John Barheydt, Gerrit Barheydt and Henry Barheydt, survivors of Elizabeth Barheydt, and Gilbert Clow, deceased, *Respondents*.

CASE.

John I. Barheydt died on the 17th day of December, 1813, leaving his daughter, Alida Van Dyck, widow of Peter Van Dyck, his sons Jacobus, Jeronimus, John S. and Henry, and his daughter Mary, the wife of Gilbert Clow, his only children and heirs at law him surviving.

Previous to his death, to wit, on the 29th day of March, 1808, said John I. Barheydt made and published his last will and testament in the words following, viz: "In the name of God Amen," &c.

Said will was proved on the 8th day of February, 1814, before Robert Hudson, then surrogate of Schenectady county, by Henry H. Peek and Lewis Barheydt, two of the subscribing witnesses: Henry A. Marsellus, one of the executors named in said will, renounced his right to the executorship, by an instrument in writing, dated said eighth day of February, 1814, and Adam S. Vrooman, the other executor named in said will, having died before said will was proved, letters of administration upon the estate of said John I. Barheydt, with said will annexed, were, on the 9th day of February, 1814, granted by said surrogate to Jacobus Barheydt, Jeronimus Barheydt and John

S. Barheydt, three of the sons of the testator, who thereupon took upon themselves the burthen of the administration of said estate.

John Barheydt, the grandson of said testator, died in the year 1817, under the age of twenty-one years, unmarried, without leaving lawful issue, and intestate, leaving his father, the appellant, his next of kin and heir at law him surviving.

Henry Barheydt, a son of the testator, died November 25th, 1824, intestate, leaving his daughters, Elizabeth, Helen the wife of John Wemple, Jane, Sarah and Lydia, and his sons John, Gerrit, and Henry, his only children and heirs at law him surviving.

On the first day of March, 1826, the respondent, Jacobus Barheydt, filed his bill in the court of chancery against the appellant and the other respondents, except Evert Wynkoop, Samuel Whitney and John Swart, and against Elizabeth Barheydt and Gilbert Clow, since deceased, in which bill he, amongst other things, insisted, that the devise in said will of the lower half of said farm, whereon the said testator's son John (the said appellant) lived, to the testator's grandson John, was for life only, and that on the death of the said devisee, the part of the farm so devised to him descended to the testator's children; and a part of the scope and object of said bill was to procure a partition of said lower half of said farm.

The defendant John S. Barheydt (the appellant) put in his answer to said bill, in which he insisted, that by the said will all the estate and interest of the said testator in said lower half of said farm was devised to the testator's said grandson John, and that on the death of said testator's grandson John in 1817, intestate, unmarried and without issue, the said lower half of said farm descended in fee to his father, the appellant, as the heir at law of his said son. The legacies directed to be paid by said John S. Barheydt out of said estate have all been paid, except a part of Mrs. Clow's; the residue Clow and his wife refused to take.

The defendants, Jane Barheydt, Sarah Barheydt, Lydia Barheydt, John Barheydt, Gerrit Barheydt and Henry Barheydt, being infants, put in a general answer to said bill by their guardian ad litem, Gershom Van Voast. The other defendants, being adults, suffered the bill to be taken as confessed by them, for want of appearance. Replications to said answers were filed and proofs taken in the cause, but as the questions arising on this appeal are purely questions of law, it is not deemed necessary by the counsel for either party to burthen the case with copies of said pleadings or proofs—it being admitted by both parties that the question as to the true construction of said will, so far as respects the devise of said lower half of said farm to the testator's grandson John, the son of the appellant, was fully and properly raised by the pleadings.

The cause was submitted to the chancellor on the pleadings and proofs, and on the written arguments of the counsel for the complainant and for the defendant, John S. Barheydt, on the 21st day of June, 1834, and on the 18th day of April, 1837, the chancellor delivered the following opinion in the cause.

In Chancery.

Jacobus Barheydt,
v.
John S. Barheydt and others. }

The Chancellor.—The controversy in this cause relates to the construction of the will of John I. Barheydt, the father of the complainant, and the rights of the several parties in his property, under the will or otherwise. On the part of the complainant, and some of the defendants who have a common interest with him, it is contended that three out of five tracts, lying together, about six miles from Schenectady, are not disposed of by the will, and that the half of the residue thereof was only devised to the testator's grandson for life, and that upon his death, soon after the testator, the reversion became vested in interest in the heirs at law of the testator.

The defendant, John S. Barheydt, on the contrary, claims the whole five tracts absolutely; the one half under a direct devise to himself, by the description of "the upper just half of my farm lying about six miles west of the city of Schenectady where my said son John now lives," and the other as heir at law of his son as the devisee of the lower half of the same farm. The substance of the will under which the claims of the several parties arise is as follows, &c.

A reference must be directed to ascertain whether there are any persons not parties who have any specific lien upon the lower half of the farm, and whether it can be divided without injury; and if the master arrives at the conclusion that it cannot, then to inquire and report as to general liens. John S. must also account before the master for the rents and profits of that part of the farm, and must be allowed for taxes, repairs, and lasting improvements made thereon. But that account is not to be carried back for more than six years previous to the filing of the bill, unless he elects to account for the rents and profits before that time, to offset against repairs and lasting improvements made before that time. The master must also take an account against each administrator separately for the assets of the testator which have come to their hands, and for their expenses and disbursements on account of the estate.

The master is to be at liberty to make a separate report as to the liens and incumbrances upon the lower half of the farm, and as to its being or not being capable of division without injury to the parties. And the question of costs, and all other questions and directions are reserved. In taking the accounts the master is to allow interest as shall be equitable.

The defendant, Elizabeth Barheydt, having died, before said opinion was delivered, intestate, unmarried, and without issue, leaving her brothers and sisters, who are defendants, her sole heirs at law: and the defendant, Gilbert Clow, having also died intermediate the submission and decision of said cause, he having no interest in the matters in controversy, except in right of his wife, who survived him; and the defendant Jane Barheydt having intermarried with Evert Wynkoop; the defendant Sarah Barheydt having intermarried with Samuel Whitney; and the defendant Lydia Barheydt having intermarried with John Swart, the following order was made and entered in said cause on the 1st day of September, 1837, to wit:

At a Court of Chancery held for the State of New-York,
at the city of Albany, on the first day of September, one
thousand eight hundred and thirty-seven,

Present:

REUBEN H. WALWORTH, *Chancellor*.

Jacobus Barheydt,

v.

John S. Barheydt, &c. }

On reading and filing the petition of the above named complainant, dated the 26th day of August, 1837, and duly verified by the affidavit of Peter Seton Henry, his solicitor, from which it appears that the defendant Elizabeth Barheydt has departed this life pending this suit, intestate, unmarried, and without lawful issue, leaving the defendants, Helen Wemple, Jane, Sarah, Lydia, John, Gerrit and Henry Barheydt, her brothers and sisters, her only heirs at law; that the defendants Jane, Sarah, Lydia, John and Gerrit Barheydt, who were infants when the bill in this cause was filed, and who put in an answer by Gershom Van Voast, their guardian *ad litem*, have, since the putting in of said answer, attained the age of twenty-one years, and that said Jane has intermarried with Evert Wynkoop, said Sarah has intermarried with Samuel Whitney, and said Lydia has intermarried with John Swart: And on reading and filing the affidavit of Alonzo C. Paige, from which it appears that the defendant Gilbert Clow died about two years since, leaving Mary his widow him surviving. And on reading and filing the consent of Julius Rhoades, solicitor for the defendant, John S. Barheydt, and for Gershom Van Voast, the guardian *ad litem* of the defendant Henry Barheydt, who is still an infant, that the prayer of said petition be granted. And the bill having been taken as confessed for want of appearance by the other defendants, who were adults when the said bill was filed: on motion of Mr. Bleecker, of counsel for said complainant, it is ordered, that this suit proceed against the defendants above named as survivors of said Elizabeth Barheydt and Gilbert Clow, and that the name of Gilbert Clow be omitted in the title to this cause, and that until the farther order of this court, the proceedings in this cause be entitled as follows, viz.: Jacobus Barheydt v. John S. Barheydt, Alida Van Dyck, Jeronimus Barheydt, Mary Clow, John Wemple and Helen his wife, Evert Wynkoop and Jane his wife, late Jane Barheydt, Samuel Whitney and Sarah his wife, late Sarah Barheydt, John Swart and Lydia his wife, late Lydia Barheydt, John Barheydt, Gerrit Barheydt and Henry Barheydt, survivors of Elizabeth Barheydt and Gilbert Clow, deceased.

And it is farther ordered, that the decretal order to be entered on the decision and opinion in this cause, pronounced on the 18th day of April, 1837, be entered *nunc pro tunc*, as of the 21st day of June, 1834, the day when said cause was submitted.

And afterwards on the 18th day of June, 1838, a decretal order was prepared by the counsel for the parties in conformity with said opinion, and entered as of said 21st day of June, 1834, in obedience to the above recited order, which decretal order is in the words following, viz.:

At a Court of Chancery held for the State of New-York
at the city of Albany, on the twenty-first day of June,
one thousand eight hundred and thirty-four,

Present :

REUBEN H. WALWORTH, *Chancellor.*

Jacobus Barheydt }
v.
John S. Barheydt, &c. }

This cause having been heretofore submitted upon the bill of complaint filed therein, and the answers of the defendants John S. Barheydt, and the answer of Jane Barheydt, Sarah Barheydt, John Barheydt, Gerrit Barheydt, Lydia Barheydt and Henry Barheydt, by Gershom Van Voast, their guardian *ad litem*, the said bill having been taken as confessed against the other defendants, and the proofs, admissions and exhibits therein, and upon the written arguments of Harmanus Bleecker, of counsel for the complainant, and of Abraham Van Vechten, of counsel for those of the defendants who appeared and answered, and due deliberation having been had thereon, *it is ordered, adjudged and decreed, and the Chancellor, by the power and authority of this court, doth order, adjudge and decree, that the lower half of the five tracts of land in the pleadings mentioned, described as follows, viz :*

[The particular description is omitted, it having no bearing on the point raised by the appeal.]

The whole of the above described lands being the farm whereon David Lawyer, junior, lived at the time in said bill mentioned, and as the same was possessed by him, the said David Lawyer, junior, at the time of the sale and transfer thereof to testator, John I. Barheydt, deceased, descended, on the death of testator's grandson John, to the heirs at law of the said testator, and that it be referred to William H. Fondley, Esquire, one of the masters of this court, to ascertain whether such lower half of said farm can be partitioned without prejudice to the parties; and if, in his opinion, the same cannot be so partitioned, that he then ascertain and report whether any creditor not a party to this suit has a specific lien on any undivided share or interest of any of the parties therein, by mortgage, devise, or otherwise, and the names and residence of such creditors, and the nature of such lien or incumbrance, so far as the same can be ascertained by him; and if it shall appear to the satisfaction of said master that a sale of said premises is necessary, and that all the proper parties are before the court, it is then further ordered, that said master ascertain and report whether the undivided share or interest of any of the parties in the premises is subject to any general lien or incumbrance by judgment or decree; and further, that he ascertain and report the amount due to any party to this suit who has either a general or specific lien on the premises to be sold, or any part thereof, and the amount due to any creditor, not a party, who has a general lien on any undivided share or interest therein, by judgment or decree, and who shall appear and establish his claim on such reference. Also, if requested by the parties who shall appear before him on such reference, such master shall ascertain and report the amount due to any creditor not a party to this suit, which is either a specific or general lien or incumbrance upon all the shares or interests of the parties in the premises to be sold, and which would remain as an incum-

brance thereon in the hands of the purchaser, to the end that such direction may be given in relation to the same in the decree for the sale of the premises, as shall be most beneficial to all the parties interested in the proceeds thereof on such sale.

And it is further ordered, adjudged and decreed, that the mortgage executed by the testator, John I. Barheydt, to David Lawyer, junior, which the defendant John S. Barheydt claims to have paid and satisfied, and be delivered up to the said master to be cancelled, and that the said master cause the same to be discharged of record.

And it is further ordered, adjudged and decreed, that all claims of debts by any of the devisees as against the estate of the testator, John I. Barheydt, or against said devisees, or any of them, in favor of said estate, be, and they hereby are, adjudged and declared closed and cancelled at the time of the death of the said testator.

And it is further ordered, adjudged and decreed, that the said master take an account against each administrator, separately, of and for the assets of the testator at the time of his death, which may have come to their hands respectively, and that in taking such accounts the said master shall allow all proper expenses and disbursements which shall have been made on account of the estate of the said testator.

And it is further ordered, adjudged and decreed, that the said master take a separate account against the defendant, John S. Barheydt, for the rents and profits of the said lower half of said farm, and that in taking said account the said defendant shall be allowed for taxes, repairs and lasting improvements made thereon, and that such account shall not be carried back for more than six years previous to the first day of March, 1826, being the time of the filing of the bill in this cause, unless the said defendant shall elect to account for the rents and profits before that time, to offset against repairs and lasting improvements made thereon previously to that time.

And it is further ordered, adjudged and decreed, that the master, in taking such accounts, allow interest, as shall be equitable.

And it is further ordered, adjudged and decreed, that the farm mentioned in said bill as having been purchased by the defendant, John S. Barheydt, in the life time of the testator, belongs to the defendant, John S. Barheydt, solely.

And it is further ordered, adjudged and decreed, that in taking the accounts hereby directed before the said master, all parties, at the instance of any one interested in this suit, produce and file with said master all books, papers and vouchers, in any manner relating to the said estate, in his or their possession, power or custody. Also, that any of the parties to this suit may require any one of the other parties to be examined before the said master, under oath, touching any of the matters involved in such accounts. And any of the said parties shall be at liberty to offer and use any testimony that has been taken in this cause before the examiner, or the answer of any of the parties.

And it is further ordered, that said master be at liberty to make a separate report as to the liens and incumbrances upon the lower half of said farm, and as to its being or not being capable of division without injury to the parties.

And that the question of costs, and all other questions and directions, be reserved until the coming in of the said report.

The defendant, John S. Barheydt, on the said 18th day of June, 1838, filed an appeal in the office of the register of the court of chancery from said last recited decretal order, which is in the words following, viz:

In Chancery.

Before the Chancellor.

Jacobus Barheydt,

v.

John S. Barheydt, Alida Van Dyck, Jeronimus Barheydt, Gilbert Clow and Mary his wife, John Wemple and Helen his wife, Elizabeth Barheydt, Jane Barheydt, Sarah Barheydt, Lydia Barheydt, John Barheydt, Gerrit Barheydt and Henry Barheydt.

The defendant, John S. Barheydt, hereby states to this honorable court, that he has appealed, and he hereby appeals, to the court for the correction of errors, from all that part of the decree made in the cause, (and by special order of the 1st day of September, 1837, directed to be entered as of the 21st day of June, 1834,) and entered with the register of this court on the 18th day of June, 1838, whereby it is adjudged and decreed "that the lower half of the five tracts of land in the pleadings mentioned, and in said decree particularly described, (the whole of which lands were the farm whereon David Lawyer, junior, lived at the time in the bill in this cause mentioned, and as the same was possessed by him, the said David Lawyer, junior, at the time of the sale and transfer thereof to the testator, John I. Barheydt, deceased,) descended, on the death of the testator's grandson John, to the heirs at law of the said testator." Also from all that part of said decree which directs the master therein referred to, "to take a separate account against the defendant, John S. Barheydt, for the rents and profits of the said lower half of said farm."

And the said defendant prays, that said decree may be sent to the court for the correction of errors, before the president of the senate, the senators, and the justices of the supreme court.

And afterwards, to wit, on the 23d day of June, 1838, he caused a petition of appeal from said decretal order to be filed with the clerk of this court which is in the usual form, and in which he insists that those parts of said decretal order, whereby it is ordered, adjudged and decreed that the lower half of the five tracts of land in said decree particularly described descended, on the death of John Barheydt, the grandson of John I. Barheydt, the testator in said decree mentioned, to the heirs at law of said testator: And whereby it is ordered, adjudged and decreed, that the master in said decree mentioned, take a separate account against said appellant for the rents and profits of said lower half of said farm, are erroneous: he therefore appeals to this court from those parts of said decretal order for the following among other reasons:

First. Because said chancellor ought to have decreed that the said lower half of said farm, on the death of said John Barheydt, the grandson of said

testator, descended in fee to his father, the said appellant, as the heir at law of said John, and not to the heirs at law of said testator, John I. Barheydt.

Second. Because said lower half part of said farm having, as is insisted on by said appellant, descended to him in fee, no account ought to be taken of the rents and profits thereof after the same so descended to him. He therefore prayed in said petition of appeal that all those parts of said decretal order or decree above mentioned, and by him appealed from, might be reversed, with costs, or such other relief granted to him as to this court should seem meet.

To which petition of appeal said complainant, Jacobus Barheydt, one of said respondents, and said defendant, Henry Barheydt, an infant, by Gershom Van Voast, his guardian *ad litem*, another of said respondents, respectively put in the usual answer, insisting that said decretal order is in the parts appealed from by said appellant agreeable to equity and justice, and they therefore respectively pray that the same may be affirmed, and that said petition of appeal may be dismissed from this court, with costs to be adjudged to said respondents.

The other defendants, who were infants at the time they put in their answers to said bill by their guardian *ad litem*, have respectively attained the age of twenty-one years, whereby the powers and duties of their said guardian have terminated, and they have not, since so arriving of full age, appeared in person or by solicitor.

We agree upon the preceding case.

JULIUS RHOADES, *of counsel for appellant.*

SAML. STEVENS, *of counsel for respondents.*

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POINTS ON APPEAL.

In the Court for the Correction of Errors.

The Utica Insurance Company	}	Points on part of the complainant.
vs.		
J. L. and others.		

I. The covenant mentioned in the pleadings, dated the 10th of January, 1827, executed by J. L. to the complainants, is an equitable mortgage, and entitles the complainants to a decree either to have a legal mortgage executed for the premises mentioned therein, or to have a sale of such premises under the direction of this court. Such equitable mortgage became a lien upon the share of the said J. L. in his father's real estate from its date.

AUTHORITIES. *Hawley v. Vernon*, 2 Cox's Ca., 13. *Legard v. Hedges*, 1 Ves. Sen. 477. *Case of Sir John Simson*, 2 Sch. & Lefroy, 381. *American Insurance Company v. Coster*, 3 Paige, 334, &c.

II. If the right and interest of James Lynch, under his father's will, in the lands and premises, was a trust estate, the judgments mentioned in the bill of

complaint were and are liens upon his share of such lands as they would be in a court of law, if the legal estate had been in him at the time of docketing such judgments. A trust estate is in equity bound by a judgment, as entirely as a legal estate is at law, except as to *bona fide* purchasers for valuable consideration without notice; and are liens as against such purchasers with actual notice.

AUTHORITIES. *Hopkins v. Hopkins*, Ca. Temp. Talbot, 52. *Clairburne v. Ingles*, West's Rep. 226. *Ferth v. Duke of Northumberland*, 4 Mad. 503, &c.

III. The defendant Roberts and the other parties provided for in the assignment mentioned in the pleadings, were not purchasers for valuable consideration, and such assignment not having been delivered until after the docketing of the judgments cannot (even if not fraudulent and void) take preference over the judgments; the lien in equity of the judgments was anterior to any right in equity under such assignment.

AUTHORITIES. *Reeve v. Roberts*, 4 Mad. Rep. 357. *Bay v. Coddington*, 5 Johns. C. R., 54, &c.

IV. The assignment could only take effect and transfer a right from the time of its acceptance. It was not accepted (except by the defendant Roberts) until the answers were filed to the original bill in this cause, nor by the defendant Roberts until the month of June, 1829, nor had Roberts any knowledge of the same until the month of March, 1829, after the docketing of the judgments. And further, if such assignment had been duly delivered to and accepted by Roberts on the day it bears date, the judgments would be entitled to priority by virtue of their taking effect, as against such assignment from the first day of the term.

AUTHORITIES. *Cunningham v. Freeborn*, 11 Wendell, 249, &c.

V. The interest of the said J. L. in all the lands in question was a legal estate, and was in him at the docketing of such judgments, and the lien thereof is in like manner prior, and to be preferred to any title under the assignment.

AUTHORITIES. *Shaw v. Wright*, 1 Eq. Ab. 184. *Trent v. Harving*, 7 East, 97, &c.

VI. The assignment is wholly fraudulent and void, and is set up to impede the recovery under such judgments, and should be set aside.

AUTHORITIES. *Merrill v. Meacham*, 5 Day, 341, &c.

[See the authorities under each point more fully, 18 Wendell, 243, &c.]

In the Court for the Correction of Errors.

John S. Barheydt, *Appellant*,
 v.
 Jacobus Barheydt and others, *Respondents*. } Appellant's Points.

I.

John I. Barheydt, in and by his will, devised the premises in question, in fee, to his grandson John, the son of the appellant.

Coke Litt. 345, Com. on, § 649.
 2 Preston on Estates, 200.
 Cruise's Dig. title 38, chap. 9 and 11.
 Ibbetson vs. Beckwith, Cases, Temp. Talbot, 157.
 Frogmorton vs. Holyday, 3 Burrows, 1618.
 Hogan vs. Jackson, Cowper, 299.
 Smith vs. Coffin, 2 H. Black. 444.
 Waring vs. Middleton, 3 Deasau. 261.
 Finley vs. King's Lessee, 3 Peters, 379.
 Morrison vs. Semple, 6 Rinney, 94.
 Earl vs. Grim, 1 J. C. R. 494.
 Jackson vs. Babcock, 12 J. R. 389.
 " vs. De Lancey, 13 ib. 557.
 " vs. Housel, 17 ib. 281.
 Baylis vs. Gale, 2 Ves. 48.
 Johnson vs. Kernan, 1 Roll Ab. 834.
 Duke of Bridgewater vs. Bolton, 8 Ves. 604.
 Lane vs. Hawkins, 2 Showers, 389.
 Barry vs. Edgworth, 2 P. Wms. 523.

Wellock vs. Hammond, Croke, E. 204.
 Collier's Case, Coke's Rep. pt. 6, p. 16, in vol. 3.
 Mary Portington's Case, ib. pt. 10, p. 41, in vol. 5.
 Read vs. Hatton, 2 Mod. 25.
 Doe vs. Fyldes, Cowp. 833.
 Moore vs. Price, 3 Keb. 49.
 Reeves vs. Gower, 11 Mod. 208.
 Ackland vs. Ackland, 2 Vern. 687.
 Freak vs. Lea, 2 Show. 38.
 Doe vs. Richards, 3 Term Rep. 356.
 Doe vs. Holmes, 8 ib. 1.
 Goodtitle vs. Maddern, 4 East. 496.
 Jackson vs. Merrill, 6 J. R. 185.
 " vs. Martin, 18 ib. 31.
 Fox vs. Phelps, 17 Wend. 393.
 Spraker vs. Van Alstyne in Error, 1837.

As to introductory words and word
estate.

As to charge upon estate de-
voted.

1 R. S. 748, § 1, 2.
 2 R. S. 57, § 5.
 Rev. Notes to 1 R. S. 748, § 1, 2, 3, at page 89,
 of Ch. 1, Pt. 2d.

II.

Upon the death of the testator's grandson John, an infant, unmarried, and without issue, in 1817, four years after said will took effect by said testator's death, his real estate, including the premises in question, descended in fee to his father the appellant.

1 R. L. 1813, p. 53, § 8, sub. 3.

III.

So much of the decree of the chancellor as is appealed from should be reversed, with costs, and the court of chancery should be directed, in lieu of the parts appealed from, to insert, in the decree of that court, an adjudication

in conformity with the first and second points; and give such consequential directions to the master, as will necessarily flow from the modifications of said decree.

JULIUS RHOADES,
Of Counsel for Appellant.

No. 225, Vol. II.—Page 46.

NOTICE OF ARGUMENT OF APPEAL.

In the Court for the Correction of Errors.

(Title.)

Sir: Take notice, that the argument of the appeal in this cause will be brought on for hearing at the next session of this court, to be holden at the _____, in the city of _____, on the _____ day of _____ next, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Yours, &c.

Dated, &c.

J. L. G., *Sol. Respondents.*

To J. L., *Sol. Appellants.*

No. 226, Vol. II.—Page 51.

DECREES OF COURT OF ERRORS.

General decree on affirmance.

In the Court for the Correction of Errors.

(Title.)

At a Court for the Correction of Errors, held at the capitol, &c., on the, &c.

Present, (a)

This cause having been heard and fully considered, it is ordered, adjudged and decreed, that the decree of the court of chancery, bearing date the day of _____, 1832, appealed from (*in part*) be and the same is hereby (*in all things*) affirmed, (as to the parts thereof appealed from,) with costs, to be taxed, to be paid by the appellant to the respondent, and that the record be remitted to the court of chancery, to the end that this decree may be carried into execution.

(a) The clerk's form is this:

Present: L. B., Lieutenant Governor, and
Mr. Justice Cowan, &c.

Senators, Chief Justice Nelson,

General decree on reversal.

In the Court for the Correction of Errors.

(Title.)

(Caption, *supra*.)

The appeal in this cause having been duly heard in this court, and deliberation had thereupon, it is ordered, adjudged and decreed, that the decree of the chancellor appealed from be reversed: And that the record and proceedings be remitted to the court of chancery, to the end that the decree of this court may be carried into execution. (See an example of a very special decree, *Stanley v. James*, 16 Wendell, 274.)

Decree of reversal and declaratory decree.

(Title.)

The appeal in this cause having been heard, it is ordered adjudged and decreed, that the respondent either took a life estate under the will in five undivided forty-second parts of the real estate of the testator, or he, together with the other sons and daughters of the testator, took the said real estate as heirs at law in equal shares; and in either case the respondent cannot make a good title in fee simple to the lot, piece or parcel of land mentioned in the pleadings. It is thereupon ordered, adjudged and decreed, that the decree of the court of chancery made in this cause be reversed and annulled, &c.: *Salmon v. Stuyvesant*, 16 Wendell, 334.

No. 227, Vol. II.—Page 52.

REMITTITUR FROM COURT OF ERRORS.

State of New-York.

Pleas in the Court for the Correction of Errors,
held at the capitol, in the city of Albany, on
the day of before the
President of the Senate, the Senators and Jus-
tices of the Supreme Court of the Judicature
of this State.

J. F. BACON, Clerk.

S. B. R., Appellant,
v.

The Utica Insurance Co., Respondents, }

Be it remembered, that on the day of (day of filing
the petition of appeal,) the appellant in this suit came here into the court
for the correction of errors, by J. L., his solicitor, and his counsel,
and filed his petition of appeal from a decree of the court of chancery of this
state in the words following: (copy petition.)

To which petition of appeal, the said respondent in this cause, on the
day of in the year aforesaid, came here into this court, by J. L., his

solicitor, and M. R., his counsel, and filed his answer in the words and figures following, to wit: (*copy answer.*)

Whereupon, this cause, having been argued by the counsel for both parties, and due deliberation being had thereupon, the said court for the correction of errors did order, adjudge and decree, that the, &c., (*copy decree.*)

Therefore, it is considered that the decree aforesaid, of the chancellor, be *affirmed*; and that the appellant pay to the respondent the sum of \$ for their costs in defending the said appeal, (or) the costs of defending such appeal to be taxed, (*not specifying the sum if not taxed.*) And hereupon the record and proceedings aforesaid, as also the judgment of the said court, are remitted to the court of chancery to be proceeded upon according to law.

No. 228, Vol. II.—Page 56.

ORDER IN CHANCERY UPON REMITTITUR.

At a Court of Chancery held for the state of New-York, at the city of Albany, on the twenty-seventh day of January, in the year one thousand eight hundred and thirty-four.

Present: REUBEN H. WALWORTH, *Chancellor.*

George Bowen, and Ann Eliza his wife, and
Mary Ann Idley, an infant under the age of
twenty-one years, by the said George Bowen,
her next friend,

vs.

Elizabeth Idley.

The record, proceedings and judgment of the court for the correction of errors, in the cause wherein the said Elizabeth Idley was appellant, and the said George Bowen and Ann Eliza his wife, and Mary Ann Idley, an infant under the age of twenty-one years, by the said George Bowen, her next friend, were respondents, having been remitted to this court to be proceeded on according to law; whereupon reading and filing the *remittitur*, whereby it appears that the said court for the correction of errors have ordered, adjudged, and decreed, that the decree of this court made in this cause on the sixth day of December, in the year one thousand eight hundred and thirty-one, and appealed from by the defendants in the said cause to the said court for the correction of errors, should be in all things affirmed; and whereby it further appears, that the said court for the correction of errors have decreed that the said George Bowen and Ann Eliza his wife, and Mary Ann Idley, an infant under the age of twenty-one years, by the said George Bowen, her next friend, should recover against the said Elizabeth Idley, their costs in defending

the said appeal, to be taxed, and that the record and proceeding be remitted to this court, to the end that the decree of the said court for the correction of errors may be carried into execution, and on motion of Julius Rhoades, of counsel for the said complainants, it is ordered, adjudged and decreed, by this court for the correction of errors, and the same is hereby declared to be a decree of this court, and that the said decree of this court thereby affirmed be carried into full operation and effect, and that the said complainants in this cause have execution against the said defendant therein, for the costs awarded and decreed in and by the said judgment of the said court for the correction of errors, and the said decree of this court thereby affirmed. And it is further ordered that this cause be remitted to the vice-chancellor of the first circuit, for further proceedings therein.

JAMES PORTER, *Register.*

No. 229, Vol. II.—Page 58.

NOTICE OF APPEAL FROM VICE-CHANCELLOR.

In Chancery,
Before the Vice-Chancellor.
 Jacob M. Henriques }
 v.
 Isaac S. Hone. }

Sir: Please to take notice, that the defendant in the above entitled cause has appealed from the decree of this honorable court, made in the above entitled cause at a court of chancery held for the state of New-York, at the city of New-York, on the tenth day of February, one thousand eight hundred and thirty-four, before the honorable William T. M'Coun, vice-chancellor of the first circuit, to the chancellor of the state of New-York; and that a bond executed by the said Isaac S. Hone and by Charles A. Spring, of the city of New-York, merchant, and Seneca Stewart, of same place, merchant, as sureties in the penal sum of twenty-five hundred and five dollars, and conditioned for the diligent prosecution of such appeal, and for the payment of all costs and damages that may be awarded against the appellant therein, and further conditioned, that if the appellant fail to prosecute his appeal, or if the decree appealed from, or any part thereof, be affirmed, that then such appellant will pay and satisfy the amount directed to be paid by such decree, or the part of such amount, as to which such decree shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant, by the court of chancery, on such appeal and approved by the honorable Wm. T. M'Coun, vice-chancellor as aforesaid, has been filed, together with a notice of said appeal, with John Walworth, Esquire, clerk in chancery for the first circuit, at his office in the city hall of the city of New-York.

Dated this fifth day of March, 1832.

Yours, &c.

JOHNSON & KENT, Sol. for Def't.

To J. W., Clerk, &c.

No. 230, Vol. II.—Page 59.

BOND FOR COSTS ONLY UNDER THE RULE.

Know all men by these presents, that we, Henry Hone and

of the city of New-York, are held and firmly bound with Hector Craig, of the same place, in the penal sum of two hundred and fifty dollars, lawful money of the United States of America, for which payment well and truly to be made, we bind ourselves jointly and severally, our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated the day of April in the year one thousand eight hundred and thirty-six.

Whereas, at a court of chancery held for the state of New-York on the twenty-second day of March, in the year one thousand eight hundred and thirty-six, present, William T. M'Coun, vice-chancellor, it was ordered and decreed, in a certain cause then depending in such court, wherein Hector Craig was complainant, and Henry Hone and Murray Hoffman, defendants, that the demurrer in such cause be and the same was thereby overruled, with costs, and the defendant, Henry Hone, answer the said bill and pay the costs of the demurrer to the complainant or his solicitor, within twenty days after notice of such order, or that such bill be taken as confessed against him, or that the complainant have an attachment to compel such answer. And whereas the said defendant, Henry Hone, hath appealed from such order or decree :

Now the condition of this obligation is such, that if the said Henry Hone shall diligently prosecute such appeal, and shall pay to the said complainant all costs and damages which may be awarded against him thereon, then this obligation to be void, otherwise of full force and virtue.

Bond, on a money decree, where the appeal will operate as a stay.

Know all men, &c. [*penalty as in the last precedent, except in the amount.*]

Whereas, [*recitals as in the last bond.*] Now the condition of this obligation is such, that if the above bounden A. B. shall fail to prosecute his said appeal, or the same be dismissed or discontinued, or the decree appealed from or any part thereof affirmed, then the said above bounden A. B. will pay and satisfy the amount directed to be paid by such decree, or the part of such amount as to which such decree shall be affirmed, if it be affirmed only in part and all damages which shall be awarded against the appellant by the chancellor, otherwise this bond and condition are to be in full force. [*This form does not embrace the security for costs, but it may be made to do so: 2 R. S. 607, § 88; and in that case the whole of the condition of the last bond should be taken and all the above be then added with the words and costs put in after "damages."*]

Sealed and delivered, &c.

[Acknowledgment; affidavit of justification; and, approval as in Nos. 214, 215.]

Bond, where the decree directs the delivery of chattels, &c.

[*Take the last precedent in all its formal parts ; and let the condition run.*] Now the condition of this obligation is such, that if the above bounden A. B. shall and do abide and obey the order of the chancellor of the state of New-York, made upon the subject of the said appeal. [*If the costs are, as they may be, embraced by the said bond, add :* and also pay all costs which shall or may be awarded against him thereon.] Then this obligation to be void, otherwise to remain in full force.

Sealed, &c.

[Acknowledgment, &c. &c. as before.]

Bond, where a decree directs the sale of real estate.

[*Take the former precedent in all its formal parts, and let the condition run :*] now the condition of this obligation is such, that if the above bounden A. B. shall not commit or suffer any waste to be committed on the aforesaid real estate by the said above bounden A. B. ; and upon this further condition, that in case such appeal be dismissed or discontinued, or such order or decree be affirmed, and such appellant shall pay the value and occupation of such property from the time of the appeal until the delivery of the possession thereof pursuant to such order or decree. [*If the costs are, as they may be, embraced by the said bond, add :* and also pay all costs which shall or may be awarded against him thereon,] then this obligation to be void, otherwise, to be and remain in full force.

Sealed, &c.

[Acknowledgment ; affidavit of justification ; and, approval as before.]

No. 231, Vol. II.—Page 66.

APPEAL FROM SURROGATE.

Surrogate's Court in the county of New-York.

In the matter of the petition of Harris Scovell,
Public Administrator, in the city of New-
York, for the revocation of the letters of ad-
ministration granted to James Buchanan,
British Consul, on the estate of John Caswell,
deceased. } Appeal.

A sentence or decree having been entered in the office of the surrogate of the county of New-York, on the twelfth day of September, in the year eighteen hundred and thirty-eight, in the words and figures following, to wit :

At a Surrogate's Court, held in and for the county of New-York, at the Surrogate's office, in the city of New-York, on the 12th day of September, in the year of our Lord, one thousand eight hundred and thirty-eight.

Present: JAMES CAMPBELL, *Surrogate*.

In the matter of the petition of Harris Scovell, Public Administrator, in the city of New York, for the revocation of the letters of administration granted to James Buchanan, Esq., British Consul, on the estate of John Caswell, deceased.

Whereas, the said Harris Scovell, public administrator, in the city of New-York, on the 16th day of April last, presented his petition, praying that the letters of administration granted on the 10th day of April last to James Buchanan, her Britannic Majesty's Consul, upon the estate of John Caswell, deceased, should be revoked, upon the ground that the same were erroneously granted: And whereas a citation was issued upon the said petition, returnable upon the 21st day of April last, which citation was duly served upon the said James Buchanan. And whereas the said Harris Scovell has appeared in person and by Samuel F. Clarkson, Esq., his proctor, and the proceedings have been adjourned from time to time, and continued by adjournment to this day, when the said Harris Scovell appeared by his proctor aforesaid, and the said James Buchanan also by his proctor, M. Hoffman; Whereupon the said surrogate having heard the proofs and allegations of the respective parties, and after due deliberation thereon, is satisfied that the letters of administration issued to the said James Buchanan upon the estate of John Caswell, deceased, ought to be revoked; I do, therefore, hereby, on motion of the said Samuel F. Clarkson, proctor for the said petitioner, revoke the same and all power and authority and control of the said James Buchanan over the personal estate of the said deceased. And I do hereby order that the costs of the petitioner in this case be paid out of the estate of the said deceased.

(Signed.)

JAMES CAMPBELL.

And the said James Buchanan, British Consul, conceiving himself aggrieved by the said sentence or decree, doth hereby appeal from the same and every part thereof, to the chancellor; and prays that the pleadings, proofs and proceedings may be transmitted to the court of chancery, and that such order may be made thereupon as shall be just.

G. H. & S., Proctors.
G. F. T., Advocate.

No. 232, Vol. II.—Page 68.

PETITION OF APPEAL.

*In Chancery,**Before the Chancellor.*

James Buchanan, Her Britannic Majesty's }
 Consul for the State of New-York, } Appellant.

and

Harris Scovell, Public Administrator, in the }
 city of New-York, } Respondent.

To the Chancellor of the State of New-York :

The petition of the above named appellant respectfully sheweth :

That heretofore the above named appellant made application to James Campbell, Esquire, surrogate of the county of New-York, for letters of administration to be granted to him upon the goods, chattels and credits, which were of John Caswell, deceased, which were granted accordingly. That the respondent afterwards presented a petition to such surrogate to obtain a revocation of such letters, and thereupon proofs having been taken and a hearing had upon the matter before such surrogate, a sentence or decree was pronounced by him on the 12th day of September last past, which sentence or decree was entered on the same day ; whereby it was ordered and decreed, that such letters of administration be revoked, as well as all power, authority, and control of the said appellant over the personal estate of the said John Caswell, deceased, and that the costs of such respondent be paid out of the estate of the deceased.

This appellant, being advised that the said order or decree is erroneous, hath appealed therefrom to this court ; and prays that the same may be reversed, and that this appellant may be decreed to be entitled to such administration. Dated, &c.

No. 233, Vol. II.—Page 68.

TRANSCRIPT OF PROCEEDINGS BEFORE SURROGATE.

The People of the State of New-York, by the grace of God, free and independent, To all to whom these presents may come or concern—Know ye, that the following are true copies of the proceedings, testimony and decree or sentence had in our surrogate's court of our county of New-York, in the matter of the petition of H. Scovell, public administrator, in the city of New-York, for the revocation of the letters of administration granted to James Buchanan, her Britannic Majesty's Consul for the State of New-York, of the estate of John Caswell, deceased.

In the matter, &c.—(See Title, No. 231.)

TRANSCRIPT PROCEEDINGS. On the 10th day of April, 1838, letters of administration upon the estate of John Caswell, deceased, were granted to James

Buchanan, Her Britannic Majesty's Consul for the State of New-York. On the 16th day of April, 1838, Harris Scovell, public administrator in the city of New-York, presented his petition, praying a revocation of such letters. On certain days subsequently, the parties attended and were heard, and the following testimony was produced by them respectively :

May 6.—A. B., examined as a witness on the part of the said James Buchanan, deposed as follows :

(In this manner the evidence was stated.)

On the day of an exhibit, of which the following is a copy, was produced and proven on the part of the said exhibit marked A, (*copied.*)

On the 12th day of September, 1838, a decree or sentence was pronounced, which is as follows, to wit: (*copy decree.*)

On the day of October, an appeal from such sentence or decree was lodged with a bond duly approved by such surrogate.

In testimony whereof, &c., (usual authentication.)

No. 234, Vol. II.—Page 69.

BOND ON APPEAL.

Know all men by these presents, that we, James Buchanan, Esquire, consul of Her Britannic Majesty, of the state of New-York, and and of the city of New-York, are held and firmly bound unto Harris Scovell, Esquire, public administrator in the city of New-York, in the sum of one hundred dollars, lawful money of the state of New-York, to be paid to him, the said Harris Scovell, his executors, administrators and assigns ; for the payment whereof, well and truly to be made, we jointly and severally bind ourselves, our and each of our heirs, executors and administrators firmly by these presents. Sealed with our seals. Dated, the day of one thousand eight hundred and thirty-eight.

The condition of this obligation is such, that whereas the above bounden James Buchanan has appealed to the chancellor of the state of New-York, from the order or decree of the surrogate of the county of New-York, made on the 12th day of September, 1838, in the matter of the petition of Harris Scovell, public administrator in the city of New-York, for the revocation of the letters of administration granted to James Buchanan, Esquire, British consul, on the estate of John Caswell, deceased, and hath caused his said appeal to be this day filed in the office of the said surrogate: Now, therefore, if the said James Buchanan shall diligently prosecute his said appeal to effect, and shall pay all costs that may be adjudged against him by the court of

chancery of the said state, then this obligation shall be void, otherwise remain in full force.

*Sealed and delivered }
in the presence of }*

No. 235, Vol. II.—Page 69.

ORDER TO ANSWER PETITION OF APPEAL.

In Chancery,

Before the Chancellor.

James Buchanan, Her Britannic Majesty's } *Appellant.*
Consul for the State of New-York, }

and

Harris Scovell, Public Administrator in } *Respondent.*
the city of New-York. }

At a Court of Chancery held for the state of New-York, in the city of New-York, on the eighteenth day of October, in the year one thousand eight hundred and thirty-eight.

Present,

REUBEN H. WALWORTH, *Chancellor.*

Upon reading and filing the petition of appeal of the above named appellant, and on motion of Graham, Hoffman and Sandford, solicitors for the said appellant, it is ordered, that the respondent file his answer to such petition in twenty days after service of a copy thereof and notice of this order, or that the said appellant be heard *ex parte*.

No. 236, Vol. II.—Page 70.

ANSWER TO PETITION OF APPEAL.

In Chancery,

Before the Chancellor.

(Title.)

The answer of Harris Scovell, public administrator in the city of New-York, to the petition of appeal of James Buchanan, &c.

This respondent admits that a decree or sentence of the date, tenor, and effect, in the said petition of appeal set forth, was made by the surrogate of the county of New-York, and this respondent is advised, and believes, and submits that such decree or sentence is just and equitable, and therefore prays that the same may be affirmed, and that such petition of appeal may be dismissed by this honorable court, with costs to be adjudged to this respondent.

C. T. CLARKSON, *Proctor.*

No. 237, Vol. II.—Page 83.

ORDER FOR COSTS UPON CHARGING BILL OF DISCOVERY INTO A BILL FOR A RELIEF.

In Chancery.

(Title.)

At, &c.

Upon motion of Mr. _____ of counsel for the complainant, and after hearing Mr. _____ of counsel for the defendant, it is ordered, that the plaintiffs may amend their bill, upon payment of the costs of the discovery and of this application to be taxed.

No. 238, Vol. II.—Page 88.

CERTIFICATE OF ASSISTANT REGISTER.

(Title.)

I certify that a taxed bill of costs, with the original affidavit required by the 131st rule, has been filed in my office.

New-York, Nov.

1838.

J. W., *Assistant Register.*

No. 239, Vol. II.—Page 89.

AFFIDAVIT, SERVICE, BILL OF COSTS, &c.

(Title.)

State of New-York, }
 County of New-York, } ss. A. B., of, &c., being duly sworn, saith, that on the _____ day of _____ last past, he served a copy of the annexed order (and of the taxed bill of costs in this cause, a copy whereof is also annexed,) upon C. M., the above named defendant, by delivering the same to him personally, between the hours of ten and two of that day, and did thereupon demand payment of the amount of such taxed bill, (or such amount) which such defendant refused to make.

(If the party entitled to the costs has made the service, the affidavit will proceed.) And further, that payment of the same, or any part thereof, has not been made to this deponent, or to any person on his behalf.

(If a clerk has made the service, the party must add an affidavit of his own that he has not been paid.)

No. 240, Vol. II.—Page 89.

PRECEPT TO COMMIT FOR NON-PAYMENT OF COSTS.

(See No. 10, Appendix to the Rules, 1837.)

No. 241, Vol. II.—Page 90.

ORDER FOR PAYMENT OF COSTS DECREED IN COURT OF ERRORS.

At a Court of Chancery, held for the state of
New-York, at the town of Saratoga Springs,
on the sixteenth day of August, one thou-
sand eight hundred and thirty-seven.

Present, John H. Gregory and Benjamin Selman,	}	REUBEN H. WALWORTH, <i>Chancellor.</i>
v.		
Daniel D. Dodge.	}	

The record, proceedings, and judgment of the court for the correction of errors, wherein the said John H. Gregory and Benjamin Selman were appellants, and the said Daniel D. Dodge was respondent, having been remitted to this court to be proceeded upon according to law, thereupon, on reading and filing the remittitur, whereby it appears that the decree of this court, made in the said cause on the twenty-seventh day of January, in the year one thousand eight hundred and thirty-five, and appealed from by the said John H. Gregory and Benjamin Selman, to the said court for the correction of errors, was by the said last mentioned court affirmed, and that the said John H. Gregory and Benjamin Selman do pay to the said Daniel D. Dodge, the costs of the said respondent in the last mentioned court, in that behalf, and which costs amount to the sum of two hundred and forty-three dollars and forty-five cents as taxed; and by the said last mentioned court, it was further ordered, adjudged and decreed, that the record and proceedings be remitted to the court of chancery, to carry into effect the order and judgment of the said court for the correction of errors; on motion of Mr. Julius Rhoades, of counsel for the said Daniel D. Dodge, it is ordered, adjudged and decreed by this court, that the said judgment of the said court for the correction of errors, and the said decree of this court thereby affirmed, be carried into full operation and effect, and that the said Daniel D. Dodge have execution against the said John H. Gregory and Benjamin Selman, for the costs directed to be paid in and by the said judgment of the said court for the correction of errors, and the said decree of this court thereby affirmed.

(Copy.)

JAMES PORTER, *Register.*

No. 241 A, Vol. II.—Page 94.

DISCHARGE OF DECREE.

(Title of the cause.)

Whereas a decree was entered in the above entitled cause on the day of 1834, whereby it was in substance, among other things, ordered, adjudged and decreed, that the defendant J. D. pay to the complainant S. B. the sum of \$ with interest from the date of such decree. Now, know ye, that I, the said S. B., do hereby acknowledge and declare, that I have received satisfaction of the amount of such decree, and have been fully paid and satisfied the money directed to be paid thereby.

(Signed.)

On this day of personally appeared before me, S. C., one of the masters of the court of chancery, residing in the city of New-York, J. D., personally known to me to be the party complainant in the above entitled cause, who did duly acknowledge before me that he had signed and executed the above discharge of such decree.

S. C., Master in Chancery.

No. 242, Vol. II.—Page 106.

BILL OF INTERPLEADER.(a)

*In Chancery,
Before the Chancellor.*

To, &c.

Complaining, show unto your honor your orator, J. R., of the city of New-York, merchant, that on or about the 26th day of June, 1821, your orator purchased of D. S., a defendant hereafter named, a certain quantity of coal, then being on board a vessel called the James, amounting to chaldrons, for which your orator agreed to pay the said D. S. the sum of \$1125, and to give his promissory note for such amount payable in thirty days from the said 26th day of June. That such coal was delivered to your orator, and he paid on account of such consideration money \$100.

And your orator further shows, that some time afterwards, and about the day of 1821, F. & S. Schermerhorn, of the city of New-York, merchants, caused an attachment to be sued out against one William Williams as an absent debtor, and that afterwards L. F. & D. Brown caused another attachment to be sued out against the said W. W. as an absconding debtor; that warrants were issued in the usual form to W. B., the sheriff of the county of New-York, who gave notice to your orator not to pay over to

any person except him the said sheriff, any property or money of or belonging to the said W. W. ; and further, that the said W. B., the sheriff aforesaid, and G. D., the attorney of the said F. & S. Schermerhorn, and the said F. & B. apprized your orator that the coal so purchased by your orator as aforesaid of the said D. S. was the property of the said W. W. for whom the said D. S. was only an agent or factor, and insisting and giving notice to your orator that he would be held liable if he paid the residue of such monies, or any part thereof, to the said D. S.

And your orator further shows unto your honor, that he made application to the said F. & S. S. and F. & B. for leave to pay over such money to the said D. S., without subjecting himself to any responsibility therefor to them, the said F. & S. S. and F. & B., which they positively refused to do. And your orator also applied to the said D. S. to relieve or secure your orator against the effect or operation of such attachments, and from any further responsibility in the premises, but he the said D. S. has wholly refused so to do, and has commenced an action at law in the supreme court of this state to recover the balance of the said money agreed upon as the price of such coal.

And your orator further shows, that he has always been willing to pay the balance of such money to such person or persons as should be lawfully entitled to receive the same and to whom he could pay the same with safety ; and he hereby offers to pay the same into this court.

And your orator further shows, that he doth not in any respect collude with either the said D. S. or F. & S. S. or F. & B. touching the matters in question in this cause ; that he hath not exhibited this bill at the request of such defendants, or any or either of them, and that he has not been indemnified by such defendants, or any or either of them, but merely of his own free will, and to avoid being molested and injured touching the matters contained in such bill. Wherefore, and as your orator can only have adequate relief in this court, to the end that the said defendants may interplead and settle their rights to the said sum of money, and that your orator may be at liberty to pay the same into this court ; and that the said D. S. may be enjoined and restrained from further proceeding in the suit at law so as aforesaid commenced by him against your orator, and that the said F. & S. S. and F. & B. & D. S. may be enjoined and restrained from commencing any suit against your orator touching the premises ; and that your orator, upon payment into court of such amount, and procuring the said defendants to interplead according to the course of this court, may be decreed to be discharged from all liability to such defendants in the premises, and may have all his costs therein. May it please, &c.

[Usual Jurat.]

Certificate Injunction Officer.

Let an injunction issue in this cause pursuant to the prayer of the bill, upon condition that the money, viz. \$1150, be brought into court before the writ be sealed, and let this condition be made part of the order for such injunction.

S. C., I. M.

No. 243, Vol. II.—Page 110.

BILL OF DISCOVERY.

To, &c.

Complaining, show unto your honor your orators A. M. and C. M., of, &c., that by a certain instrument of assignment, dated the day of made between J. D. of the city of New-York, of the first part, and your orators, of the second part, the said J. D. bargained and sold, assigned, transferred and set over unto your orators the certain property, goods, choses in action and securities for money therein, and in the schedules thereto particularly mentioned in trust, (*set forth assignment particularly.*) And your orators further show, that at the time aforesaid, there was due and owing to the said J. D. from one R. B., of the said city of New-York, a defendant hereafter named, the full and just sum of \$750, being the balance of an account between him the said R. B. and the said C. D., the particulars of which account are set forth in a schedule marked A. hereto annexed, and to which your orators refer. And your orators further show, that they have repeatedly applied to the said R. B. to pay them the aforesaid sum of \$750, so justly due from him, with which reasonable request he has refused to comply; and having so refused, your orators were compelled to and did commence an action at law in the superior court of the city of New-York, for the purpose of obtaining payment thereof. And your orators charge, that the said R. B. hath pleaded in such suit, and given notice of a set-off in the same, and hath delivered a particular of such set-off, which, down to the date of such assignment, corresponds with the credit side of the account set forth in the schedule hereto annexed, but that such defendant hath included in the said particular three several items, one of \$50, one of \$48, and one of \$36, being charges for goods delivered in the course of the month of in the year for which he claims credit in such action.

Whereas your orators charge, that the said R. B., at the time of the delivery of each and every of such parcels of goods so charged for as aforesaid, knew and was well apprized of the assignment to your orators, or that he the said C. D. had made some assignment of all his property and effects for the benefit of creditors.

And your orators have no means of proving such knowledge or information on the part of the said R. B. in the action at law aforesaid, and can only establish the same by means of a discovery from such defendant. And they are advised, that they cannot safely proceed to the trial of such action without a discovery of the matters hereinbefore stated from such defendant. To the end therefore, (*special interrogatory as to knowledge.*)

And that such defendant may make a full and true discovery of all the matters aforesaid. May it please, &c., omitting the word "decree."

(See the Treatise, Vol. II. p. 110.)

No. 244, Vol. II.—Page 120.

BILL BY A JUDGMENT CREDITOR.

In Chancery.

To the Chancellor of the State of New-York:

Complaining, sheweth unto your honor, your orator, Abraham Van Vechten, of the city of Albany, counsellor at law, that heretofore, to wit, on the second day of October, in the year one thousand eight hundred and thirty-three, in the term of July in said year, your orator, in the supreme court of judicature of the people of the State of New-York, by the consideration and judgment of the said court recovered against Doun Fonda, of the city of Albany, gentleman, the defendant hereinafter named, three thousand dollars of debt and fourteen dollars forty-two cents for the damages, costs, &c., which your orator had sustained by reason of the non-payment of the said Doun Fonda of the said debt, as well as for the costs and charges of your orator by him about his suit in that behalf expended, which were adjudged to your orator in and by the said court, as by the record and proceedings now on file in the office of the clerk of said court in the city of Albany, reference being thereunto had, and to which, for greater certainty, your orator prays leave to refer, doth and may more fully and at large appear.

And your orator further shows unto your honor, that the said judgment so recovered by your orator as aforesaid, was docketed in the office of the clerk of the said supreme court of judicature, kept in the city of Albany, on the second day of October, in the year one thousand eight hundred and thirty-three, as by reference to the docket thereof now remaining in the office of the clerk of said court, in the city of Albany, will more fully appear, and to which your orator prays leave to refer should it be necessary so to do.

And your orator further shows unto your honor, that the judgment so recovered in manner aforesaid, remaining unpaid and unsatisfied, your orator by Van Vechten and Rhoades, his attornies, on or about the eighth day of October, in the year one thousand eight hundred and thirty-three, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of the said supreme court of judicature, before the justices thereof, at the academy in the town of Utica, a writ of the people called a *feri facias*, directed to the sheriff of the county of Albany, in which county the said Doun Fonda resides, by which said writ the said people commanded the said sheriff, that of the goods and chattels of the said Doun Fonda within his bailiwick, he should cause to be made the sum of three thousand dollars, which your orator, in the said supreme court of judicature, at the time and place aforesaid, recovered against the said Doun Fonda, as well by reason of the said debt as for the costs and charges by your orator about his suit in that behalf expended, whereof the said Doun Fonda was convicted, as appeared to them of record. And if sufficient goods and chattels of the said Doun Fonda could not be found in his bailiwick, that then and in that case he should cause the damages aforesaid to be made of the lands and tenements, whereof the said Doun Fonda was seized on the second day of October, in the year one thousand eight hundred and thirty-three, or at any time afterwards, in whose hands

soever the same might be; and that he should have those moneys before the said justices of the supreme court at the capitol in the city of Albany on the third Monday of October, in the year one thousand eight hundred and thirty-three, to render to your orator for the damages aforesaid, and that he should have then there that writ.

And your orator further shows unto your honor, that the said writ of *feri facias*, before the delivery thereof to the said sheriff of the county of Albany, as hereinafter mentioned, was duly endorsed with a direction for the said sheriff to levy for debt the sum of fifteen hundred dollars, and interest from the thirtieth day of September, in the year one thousand eight hundred and thirty-three, and the sum of sixteen dollars and seventy-nine cents for costs, with interest from the said second day of October, in the year one thousand eight hundred and thirty-three, besides sheriff's fees. And was, on the tenth day of October, in the year aforesaid, delivered to the said sheriff of the county of Albany, to be executed in due form of law.

And your orator further shows unto your honor, that the said sheriff of the county of Albany, on the said return day of the said writ of *feri facias*, returned to the said writ to him in that behalf, directed and delivered as aforesaid, that the said Doun Fonda had not any goods or chattels, lands or tenements in his bailiwick, whereon he could levy to satisfy the same or any part thereof, as by the said writ of *feri facias*, and return of the said sheriff of the county of Albany endorsed thereon, and now on file in the office of the clerks of the said supreme court, in the city of Albany, more fully appears, and to which your orator prays leave to refer, should it be necessary so to do. [(a) All which facts above stated your orator has understood from his said attorneys, or one of them, and believes to be true.]

And your orator further shows unto your honor, that the said judgment so as aforesaid docketted in favor of your orator against the said Doun Fonda, remains wholly unpaid and unsatisfied, and as your orator believes, unreversed, and that the whole amount which the said sheriff was directed to levy for thereon, is still equitably and justly due to your orator from the said Doun Fonda, upon said judgment over and above all just claims of the said Doun Fonda, by way of offset or otherwise.

And your orator further shows unto your honor, that he is informed and believes, that the said Doun Fonda has equitable interest in things in action or other property of the value of one hundred dollars and more, exclusive of all prior just claims thereon, which your orator has been unable to discover and reach by execution on his aforesaid judgment.

And your orator further states that this, his bill of complaint, is not exhibited by collusion with the said Doun Fonda, nor for the purpose of protecting his property or effects against the claims of other creditors; but for the sole purpose of compelling payment and satisfaction of your orators own debt aforesaid.

And your orator further shows unto your honor, that he believes and so charges the fact to be, that the said Doun Fonda is possessed of, or entitled

(a) This clause is not to be inserted if the complainant knows the facts.

to real and personal estate and chattels real and things, in action, or some or one of them, within the jurisdiction of this court, or which are held in trust for him by some other person or persons, or body corporate, the proceeds of which ought to be appropriated under the direction of the honorable court, to the payment and satisfaction of the amount due on the aforesaid judgment; but inasmuch as your orator is ignorant where the same, or any part thereof, is or are now situated, or the nature of the title thereto, and is unable to ascertain whether the same, or any part thereof, is subject to an execution that might be issued out of a court of law, he is compelled to ask the aid and interference of this honorable court, in pursuance of the statute in such case made and provided.

And your orator further shows unto your honor, that he is informed and believes, and so charges the fact to be, that the said Doun Fonda has various articles of plate and other personal property, a gold or silver watch, and evidences of debt or things in action, either in his own possession, power or custody, (consisting of moneys, coin, bank notes, bonds, mortgages, book or other accounts, or other evidences of debt, stocks in private or incorporated companies, or of the government of this State or of the United States,) or things in action, or personal property of some other kind or character, or which are holden for him by some third person in secret trust, or under some colorable title, for his benefit or for the benefit of his family, but which is under his control and direction, and of which secret trust he has some parol or written evidence, but which he refuses to disclose to your orator.

And your orator believes and so charges and insists, that the property, plate and things in action, so possessed by or held in trust for the said Doun Fonda, or his family, is of a value sufficient to pay and satisfy to your orator the amount due on the aforesaid judgment, or a great part thereof. And your orator well hoped that the said Doun Fonda would have applied the same, or the proceeds thereof, or so much of the same as might be necessary, to the payment of the amount so due to your orator as aforesaid, as in equity and good conscience he ought to have done.

But now so it is, may it please your honor, that the said Doun Fonda, combining and confederating with divers persons whose names are at present unknown to your orator, but which when discovered he prays leave to add as parties to this his bill of complaint, with proper and apt words to charge them in the premises, contriving how to injure and aggrieve your orator in this behalf, has altogether neglected and declined to pay your orator's aforesaid just demand against him, alleging divers unfounded objections and pretences in that behalf. Sometimes the said Doun Fonda pretends that he is poor and unable to pay the amount of the said judgment, the contrary whereof your orator charges that he believes to be the fact, and that he is able to pay and satisfy the amount of said judgment, or the greater part thereof, out of the personal property, money or things in action now in his possession, or subject to his control and direction; and that the said Doun Fonda has money in coin or bank bills, bonds and mortgages, promissory notes, bills of exchange, drafts and acceptances, stocks, book accounts, and other things in action of large amount; and if the same are not under his immediate power and control,

that they are held in trust by some other person or persons for the benefit of said Doun Fonda or his family.

All which actings, doings and practices of the said Doun Fonda, and of his secret confederates and trustees, are contrary to equity and good conscience, and tend to your orator's manifest wrong and injury.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises at common law, and cannot, except by the aid and interference of this honorable court where matters of this nature are properly cognizable and relievable, obtain a complete discovery of the property and estate of the said Doun Fonda, both real and personal, within the jurisdiction of this state, nor have the same when discovered, or so much thereof as is not subject to a sale on an execution, applied to the payment of your orator's aforesaid judgment.

To the end, therefore, that the said Doun Fonda and his confederates, when discovered, may, (*upon his and their respective corporal oaths,*) full, true, direct and perfect answers make, according to the best of his and their knowledge, information, recollection or belief, to all and singular the matters in this your orator's bill of complaint contained, and that as fully and at large, paragraph by paragraph, as if the same were here again repeated, and he thereunto specially interrogated; and especially that said Doun Fonda and his confederates and trustees may set forth and discover what real estate there is to which he has any title, either in possession, reversion, or remainder, where situated, the boundaries and description and value thereof; and whether, according to the best of his knowledge, information or belief, there is any real estate held by a third person or persons under any secret trust or colorable title for his benefit, or for the benefit of any of his family, and when such trust was created, and how, and by whom, and who are the witnesses to the same; and whether by deed or otherwise, and how, and that he may set forth a copy of any such deed or assignment.

And that the said Doun Fonda may set forth and discover what bonds and mortgages he has, the amount thereof, and where the mortgaged premises are situated, the description thereof, and the sum secured thereby and to whom, and when, and where, and how payable, according to the condition thereof.

And that the said Doun Fonda may set forth and discover whether he has any personal property of any kind or description whatsoever; where the same is now situated and the value thereof; and whether he has any bonds, notes, stocks, bills of exchange, book accounts, or other written or documentary evidences of debt or other thing in action, either in his own possession, power, custody or control, or in the possession, power, custody or control of any third person or persons for his benefit, and held by assignment, or by any other and what evidence of transfer; and if he has, to set forth the respective amounts thereof, from whom due and to whom payable; and whether there is or are any person or persons whatever who is or are indebted to him in any sum or sums of money, whether now due, or to grow due, or any contract, bargain or agreement, written or oral, heretofore made, and to set forth the amount of such indebtedness respectively, and from whom due or to become due, and when payable; and whether he has any money in coin or bank notes in his possession, or custody, or under his control, or held in trust by some third person or persons,

and by whom, for his use or for the use of his family, or deposited in any and what bank, and the amount thereof. And that the said Doun Fonda may come to a just and fair account touching the amount due to your orator on the aforesaid judgment hereinbefore mentioned and in part set forth, and that he may be decreed forthwith to pay to your orator the amount which shall be ascertained to be due to him on the said judgment, and in default thereof, that such property as shall be discovered to belong to the said Doun Fonda, or to which it shall be found he has any right, including both real and personal property and things in action, may be realized and converted into money, and appropriated under the order, direction or decree of this honorable court, towards the satisfaction of your orator's aforesaid judgment, and the costs, and expenses, incurred by your orator in this behalf to be taxed. And that some discreet and proper person may be appointed by this honorable court a receiver in this cause, to collect and take charge of the property, money and things in action that may be found to belong to the said Doun Fonda, or to which he may or can in any manner be entitled, either in law or in equity, with power to convert the same into money, and with such other powers as are usually granted to receivers in similar cases.

And that your orator may have such further or other relief in the premises as the nature of his case may require, and as shall be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orator the people's writ of injunction, to be issued out of and under the seal of this honorable court, to be directed to him, the said Doun Fonda, and his confederates when discovered, and his assignee or assignees, in trust, attorneys, counsellors, clerks, servants, trustees and agents, enjoining and restraining them, and each and every of them, from assigning, transferring or making any other disposition of the real estate, personal property, things in action, stocks or evidences of debt of any kind whatsoever to which the said Doun Fonda now is in any wise entitled, including bonds, mortgages, notes, bills of exchange, book accounts, moneys in coin or bank notes, and moneys in deposit, and restraining the said Doun Fonda from receiving any money now due or to become due to him, whether due from individuals or from bodies corporate, except where the same are held in trust, and such trust has been created by, or the fund so held in trust has proceeded from, some person other than said Doun Fonda; and from making any assignment, or other disposition thereof, or in any other manner intermeddling with any monies due or to become due to him, or with any bond or mortgage, promissory note, scrip for stock, or stock itself, bill of exchange, book account, or other evidence of debt or thing in action to which he may be in any manner entitled; and from paying any money in coin or bank notes to any one who may or can have any claim or demand against him, or making any other disposition of any monies, personal property, or things in action; or from confessing any judgment for the purpose of giving any other creditor a preference over your orator, or from doing any other act to enable his other creditors to obtain his property which your orator has been unable to discover or reach by execution, until the further order of this honorable court.

May it also please your honor, the premises considered, to grant unto your

orator the people's writ of subpoena, to be issued out of and under the seal of this honorable court, to be directed to the said Doun Fonda and his confederates when discovered, therein and thereby commanding him and them on a certain day, and under a certain pain therein to be specified, personally to be and appear before your honor in this honorable court, and to answer all singular the premises; and further, to stand to, abide by, and perform, such order, direction and decree in the premises as shall be made therein.

And your orator will ever pray, &c.

Dated Albany, October 1833.

(Signed,)

AB. VAN VECHTEN.

VAN VECHTEN & RHOADES, *Complainant's Solicitors.*

JULIUS RHOADES, *of Counsel.*

T. VAN VECHTEN, *of Counsel.*

State of New-York, city and }
county of New-York, } ss.

[Usual Jurat.]

I have examined the within bill of complaint, and am of opinion that an injunction ought to be issued, according to the prayer of said bill.

(Signed,)

J. KING, *Injunction Master.*

Albany, Oct. 23, 1833.

No. 245, Vol. II.—Page 120.

In Chancery.

Before the

Chancellor.

}

Notice of Motion for Receiver.

Sir: Please to take notice, that upon the bill of complaint filed in this cause, with a copy of which you are herewith served, and upon affidavit, proving the due service of the writs of injunction and of subpoena, issued in this cause upon

the defendant herein, a motion will be made in this honorable court, before the chancellor on the day of

at the opening of the court on that day, or as soon thereafter as counsel can be heard, that it be referred to one of the masters of this court to appoint a receiver of the money, property, things in action and effects of the above named defendant

with the usual powers and authority of receivers in like cases. That the above named defendant be directed to assign, transfer and deliver to the said receiver, on oath, under the direction of said master, all the pro-

perty, money, equitable interests, things in action, and effects of the above named defendant with all the books and papers relating thereto, and the evidences thereof. That the above named defendant appear before said master from time to time, and produce such books and papers, and submit to such examination as the said master shall direct in relation to said property, equitable interests, things in action and effects; and that the complainant be at liberty to examine witnesses before said master, in relation to the same; and to the other matters charged in the said bill of complaint, and not admitted by said defendant and for such further or other order in the premises as to the said court shall seem just.

Dated

18

Yours, &c.,

SoPr. for Complnt.

To

one of the above named defendants.

No. 246, Vol. II.—Page 122.

INJUNCTION ON JUDGMENT CREDITOR'S BILL.

The people of the State of New-York, to

INJUNCTION.
FIRST CIRCUIT.

and to counsellors, attorneys, solicitors, and agents, and each and every of them, greeting: whereas, it has been represented to us, in our court of chancery, on the part of

complainant that ha lately exhibited bill of complaint in our said court of chancery, before our against you, the said

to be relieved, touching the matters therein complained of; in which bill, it is stated, amongst other things, that you are combining and confederating with others to injure the said complainant touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience: we, therefore, in consideration thereof, and of the particular matters in the said bill set forth, do strictly command you, the said (*the judgment debtor*) and the persons before mentioned, and each and every of you, under the penalty of ten thousand dollars, to be levied on your lands, goods, and chattels, to our use, that you do absolutely desist and refrain from collecting, receiving, selling, transferring, assigning, delivering, or in any way or manner using, controlling, or interfering with, or disposing of any debts or demands due to you; or any goods, wares, merchandises, account books, bills, drafts, checks, money, stocks, promissory notes, bonds, mortgages, judgments, or other securities, things in action, property, or effects belonging

to you, whether in your own name or hands, or in the name or hands of, or held by any other person or persons, for your use or benefit, or in trust for you express or implied; and you are hereby enjoined from confessing any judgment for the purpose of giving preference to any other creditor over the complainant, and from doing any other act to enable other creditors to obtain your property. And we further command you, the said (*the assignee*) that you do absolutely desist and refrain from parting with, transferring, or in any way disposing of, all or any the goods, chattels, debts and securities, and other property mentioned in the assignment dated the day of executed to you by the said J. D., or from parting with any money or monies now in your hands, or which may come to your hands, arising from or by reason of such assignment, or from the property comprised therein, until the further order of our said court of chancery.

Witness, REUBEN H. WALWORTH, Esquire, Chancellor of our said state, at the city of New-York, the day of one thousand eight hundred and

Sol'r.

Clerk.

No. 247, Vol. II.—Page 123.

NOTICE TO APPEAR AND ANSWER.

In Chancery.
Before the

Chancellor.

vs.

Please to take notice, that the entry of the defendant's appearance, and an answer on oath, is required in this cause, and you are herewith served with a copy of the one hundred and ninety-first rule of this court, in pursuance of the requirements thereof.

Dated the day of 18
Yours, &c.

To the defendant

Sol'r for Compl't.

Copy of the One Hundred and Ninety-first Rule of the Court of Chancery of the State of New-York.

The debtor against whom a creditor's bill is filed, shall not be subjected to the expense of putting in an answer thereto in the usual manner, if he shall

cause his appearance to be entered within twenty days after the return day of the subpoena, and shall, within twenty days after service of a copy of the bill and notice of the order to answer, deliver to the complainant or his solicitor a written consent that an order may be entered taking the bill as confessed; and for the appointment of a receiver, and for a reference to take the examination of the defendant in conformity to this rule. Upon presenting such written consent to the court, the complainant may have a special order, founded thereon, directing the bill to be taken as confessed against the debtor; and referring it to such master as the court may designate in such order, to appoint a receiver, with the usual powers, and to take from him the requisite security. The order shall also direct the defendant to assign, transfer, and deliver over to the receiver on oath, under the direction of the master, all his property, equitable interests, things in action and effects; and that he appear before the master, from time to time, and produce such books and papers, and submit to such examination as the master shall direct, in relation to any matter which he might have been legally required to disclose if he had answered the bill in the usual manner. The expense of taking down such examination, by the master, shall be paid by the complainant, in the first instance, and may be taxed and allowed to the latter as a part of his necessary costs in the suit. The complainant shall also be at liberty to examine witnesses before the master, as to the property of the defendant, or as to any other matter charged in the bill, and not admitted by the defendant on such examination. And the complainant shall cause a written or printed copy of this rule to be served on the defendant, at the time of the service of the subpoena, with a notice to the defendant that an entry of his appearance and an answer on oath is required; or such defendant shall not be answerable to the complainant for the costs of the proceedings to compel an appearance and answer.

No. 248, Vol. II.—Page 123.

NOTICE BY DEFENDANT OF SUBMISSION UNDER 191st RULE.

(Title.)

Sir:—Take notice that I consent that an order may be entered in this cause, taking the bill as confessed by me, and for the appointment of a receiver, and for a reference to take the examination of the defendant, in conformity with the 191st rule of the court of chancery of this state.

Your obt^t servant,

Dated,
To G., H. & S., Solicitors for Complainants.

No. 249, Vol. II.—Page 124.

ORDER FOR EXAMINATION OF DEFENDANT, &c.

Upon consent under 191st Rule.

(Title.)

At, &c.

Upon reading and filing a written consent of J. D., solicitor for the defendant N. B., that the bill be taken as confessed and a receiver appointed; and on motion of Mr. H., solicitor for the complainant, it is ordered, that the bill of complaint filed in this cause be, and the same is hereby taken as confessed by the defendant N. B. And it is further ordered, that it be referred to D. C., one of the masters of this court, residing in the city of New-York, to appoint some suitable person to be receiver in this cause of the property, real and personal, equitable interests, things in action, and effects of the said N. B.; and that such master take from the receiver the necessary and usual security and file the same in the proper office. And it is further ordered, that upon the filing the report of such master and such security, the said report shall stand confirmed, and the said receiver be vested with all his rights and powers without further order. And the said defendant R. B., is hereby ordered to appear before such master and assign, transfer, convey and deliver over to such receiver, on oath, all his property, real and personal, leasehold interests, equitable interests, things in action, account books, papers and effects; and shall also, from time to time, produce such books or papers and submit to such examination as the said master shall direct, in relation to any matter which the said defendant would be legally required to disclose by answer to the bill of complaint. And that the complainant be at liberty to examine witnesses before such master in relation to the real estate, leasehold, chattels real and personal, equitable interests, things in action and effects of the said defendant N. B., and also as to any matter charged in the said bill, and not admitted by the said defendant on such examination aforesaid before the said master. And the expense of taking down the examination by the said master is to be paid by the complainant in the first instance, and may be taxed and allowed to the latter as a part of his necessary costs in this suit. And it is also ordered, that the receiver, when so appointed, shall have general power and authority to sue for and collect all the debts, demands, and rents belonging to the said defendant C. D.; and to compromise and settle such as are unsafe or of a doubtful character. He may also sue in the name of the debtor, where it is necessary or proper for him to do so; but the said receiver will not, in his accounts, be allowed for the costs of any suit brought by him against an insolvent from whom he is unable to collect his costs, unless such suit is brought by order of the court or by the consent of all persons interested in the funds in his hands. And the tenants of the real estate of the debtor C. D., are to attorn to such receiver, or the said receiver may, when necessary, apply for and obtain an order that any of such tenants attorn and pay rent to him. And such receiver is hereby permitted to make leases, from time to time, as may be necessary, for a term not exceeding a year. And it is also hereby made the duty of the said receiver, without any unreasonable delay, to convert all the aforesaid personal estate and effects into money, but he is not to sell any real estate without the special

order of the court, although he may sell desperate debts and all other doubtful claims to personal property, at public auction, giving at least ten days public notice of the time and place of such sale. And the said master shall also proceed herein, under the provisions of the 194th rule, to ascertain whether a receiver be already appointed of the estate and effects of the said defendant ; and if there should be, and the master appoint him to be also the receiver herein, then all the rights and powers herein shall attach to such present receiver, subject to the said 194th rule of the court.

No. 250, Vol. II.—Page 124.

ORDER UPON A JUDGMENT CREDITOR'S BILL WHERE CONSENT IS NOT GIVEN.

[Follow the preceding precedent, except instead of the words—"in relation to any matter which the said defendant would be legally required to disclose by answer to the bill of complaint," say "in relation to such property or effects." Omit also the words, "and also as to any matter charged in the said bill, and not admitted by the said defendant, on such examination aforesaid before the said master."]

No. 251, Vol. II.—Page 132.

ASSIGNMENT TO A RECEIVER UNDER A JUDGMENT CREDITOR'S BILL.

This indenture, made this day of in the year one thousand eight hundred and between C. D., (the debtor,) of, &c., of the first part, and A. G., of, &c., receiver appointed by the court of chancery of the state of New-York, of the second part. Whereas, in and by an order of the court of chancery of the state of New-York, before the vice-chancellor of the first circuit, in a certain cause wherein A. B. was complainant and C. D. and others were defendants, it was ordered that it be referred, &c., (here recite the order.) And whereas the said party of the second part has been duly appointed such receiver, and has given and filed the requisite security, pursuant to the rules and practice of the said court and the provisions of the said order: Now this indenture witnesseth, that the said party of the first part, in obedience to the said order, and in consideration of the premises aforesaid, and of one dollar to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath conveyed, assigned, transferred and delivered over unto the said party of the second part under the direction of the said master, (testified by his approval endorsed thereon,) all and every the estate, real and personal, chattels real, monies, outstanding debts, things in action, equitable

interests, property and effects whatsoever and wheresoever, of or belonging or due to the said party of the first part, or in which he had any estate, right, title or interest at the time of filing the bill of complaint in the above recited suit in chancery, and which bill was filed on the day of last. And also all deeds, writings, leases, muniments of title, books of accounts, papers, vouchers and other evidences whatsoever relating or appertaining thereto. To have and to hold the same unto him, the said party of the second part, as such receiver as aforesaid, and to his successors and assigns, subject to the present and future order, direction and control of the said court of chancery. And for the better and more effectually enabling the said party of the second part, his successors and assigns to recover and receive all or any part of the estate, property, book debts, choses in action and effects, hereby conveyed, assigned and transferred, he, the said party of the first part, hath made and appointed, and by these presents doth make and appoint, the said party of the second part his successors and assigns, the attorney and attornies of him, the said party of the first part, in his name to commence, continue, discontinue, and again bring, perfect and carry out actions and suits against any corporated company, firm, persons or person, for or on account of all or any part of the said estate, property, choses in action or effects.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Scaled and delivered }
in presence of }

[If specific property is discovered, it should be specifically described.]

No. 252, Vol. II.—Page 135.

BILL OF FORECLOSURE.

In Chancery.

To the Chancellor of the State of New-York.

A. B., of the city and county of Albany and state of New-York, complainant in this suit, shows to the chancellor, that on or about the twenty-seventh day of January, in the year one thousand eight hundred and twenty-seven, C. D. of said city, the defendant in this suit, to secure the payment of the sum of \$500 00, with interest, did make and execute, under his hand and seal, and deliver unto said complainant, a bond, bearing date on that day in the penal sum of \$1000 00, lawful money of the United States, with a condition therein under written, that if said C. D., his heirs, executors, or administrators, should pay, or cause to be paid, unto said complainant, his heirs, executors, administrators or assigns, the sum of \$500 00 in one year from the date thereof with lawful interest, then said obligation should be void, otherwise, remain in full force and virtue; as by said bond, ready to be produced as this court shall direct, reference being thereunto had, will appear; and the said C. D., one of the defendants in this suit, to secure the payment of

said sum of money, together with the interest which should accrue thereon, did, on the same day, duly execute under his hand, and seal and deliver unto said complainant a mortgage, bearing date on that day, by which said defendant did grant, bargain, sell, alien, release, convey, and confirm, unto said complainant, his heirs and assigns, for ever, *all*

together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said defendant of, in, and to the same, and every part and parcel thereof, with the appurtenances: to have and to hold said premises, with the appurtenances, unto said complainant, his heirs and assigns, to his and their own proper use, benefit and behoof for ever; provided always, and said mortgage was therein declared to be upon condition nevertheless, that if said defendant, his heirs, executors or administrators should pay unto said complainant, his heirs, executors, administrators or assigns, the sum of money mentioned in the condition of said bond with the interest thereof, at the time, and in the manner therein specified, according to the true intent and meaning thereof, that then said mortgage, and the estate thereby granted, should cease, determine, and thenceforth be null and void; and said C. D., for himself, his heirs, executors, and administrators, did, in and by said mortgage, covenant and agree to pay unto said complainant, his heirs, executors, administrators or assigns, said sum of money, with the interest thereof, at the time, and in the manner therein before mentioned, according to the condition of said bond; and which mortgage, was duly acknowledged by said defendant and recorded in the office of _____ of the

county of _____ in lib.
of mortgages, page _____ the _____ day of _____
in the year one thousand eight hundred and _____ at

of that day, as by said mortgage, ready to be produced as this court shall direct, or the record thereof will appear. And said complainant further shows, that the sum of \$175 00, part of the principal sum mentioned in the condition of said bond and mortgage, remains due to him, together with interest thereon, at the rate of seven per cent per annum, from the thirtieth day of November in the year one thousand eight hundred and thirty-four, by reason whereof the estate of said complainant in said mortgaged premises hath become and is absolute in law, subject only to the equity of redemption in this court. And he further shows that said defendant, or those claiming under him, has, from the time of making and executing said mortgage, possessed and enjoyed, and still does possess and enjoy, all and singular the said mortgaged premises, and has at all times received, and still doth receive the rents, issues, and profits thereof. And that no proceedings, at law or otherwise, have been had by him or any other person or persons, for the recovery of said sum of money mentioned in said bond and mortgage, or any part thereof. He therefore solicits the aid of this court, to compel said defendants (*upon their corporal oath,*) true, full, and perfect answers to make to all and singular the statements and charges above set forth, (*an answer under oath from such de-*

defendants, or either of them, being hereby waived pursuant to the statute,) according to the best of their knowledge, information, and belief, and that the said defendants may be decreed to pay to said complainant, said principal sum of money above mentioned, with the arrears of interest now due, or hereafter to become due and payable thereon, together with the costs and charges in this behalf expended, by a day to be appointed by this court, and in default thereof, that said defendants above named, and all persons claiming, and to claim under *them, or either of them, or otherwise*, may be foreclosed, of and from all equity of redemption, and claim of, in, and to said mortgaged premises, and every part thereof, with the appurtenances, and may deliver over unto said complainant all deeds, demises, and writings, relating to, or concerning the same; and that all and singular said mortgaged premises, with the appurtenances, may be sold under the decree of this court, and that out of the money arising from the sale thereof, he may be paid the principal sum due on said bond and mortgage, and all interest money due, and to become due thereon, together with all costs and charges, by him in this behalf sustained; or that he may have such other or further relief in the premises as may seem proper, and shall be agreeable to equity and good conscience. May it please the chancellor, to grant the people's writ of subpoena to be issued under the seal of this court, directed to said
therein and thereby commanding _____ on a certain day, and under a
certain penalty, to be and appear before the _____ chancellor
in this court, then and there to answer this bill of complaint,
and to stand to and abide by such order and decree in the premises as shall
seem meet and agreeable to equity and good conscience.

NOTICE, OBJECT OF SUIT AND OF LIS PENDENS MORTGAGE CASE.

In Chancery.
(Title.)

Lis Pendens.

To all whom it may concern : Take notice, that a bill has been filed and is now pending in the court of chancery of the state of New-York, wherein the above named A. B. is complainant, and T. M., &c. are defendants, for the purpose of foreclosing a certain mortgage executed by T. M. to the said A. B., dated the day of and obtaining a sale of the parcels of ground comprised therein, which mortgage is recorded in liber of register of mortgages, in the office of register of the county of New-York, page and which lots of land are described therein as follows, to wit. All, &c.

Notice, object of suit.

Please to take notice, that this suit is instituted to foreclose a certain mort-

raise the amount due and costs, and if so, to state what part would be most proper to be sold, and to report thereon with all convenient speed.

No. 256, Vol. II.—Page 139.

ORDER, REFERENCE, INTEREST OR INSTALMENT DUE.

At, &c.,

Peter Germond

v.

Alvin Wilber and Mary his wife,
Daniel Wilcox and John Wil-
beck, Jr.

It appearing from the proceedings in this cause that the bill was filed for the foreclosure or satisfaction of a mortgage, that the whole amount secured, or intended so to be, by said mortgage, is not yet due; and that said bill has been regularly taken as confessed by all of the defendants. On motion of Mr. Ira Harria, solicitor for the complainant, it is ordered, that it be referred to one of the masters of this court, residing in the county of Albany, to compute the amount due to the complainant on the bond and mortgage mentioned in said bill of complaint. And also to ascertain and report the amount secured to be paid by said bond and mortgage, and which remains unpaid, including interest thereon to the date of such report. And also to ascertain and report the situation of the mortgaged premises, and whether, in his opinion, the same can be sold in parcels without injury to the interests of the parties, and if he shall be of opinion that a sale of the whole of said premises, in one parcel, will be most beneficial to the parties, then that he report his reasons for such opinion.

(Copy.)

JAS. PORTER, *Register*.

No. 256 A. Vol. II.—Page 139.

ORDER, REFERENCE, ABSENT DEFENDANT.

At a Court of Chancery held for the State of New-York,
at the city of Albany, on the fourth day of May, one
thousand eight hundred and thirty-nine,

Present: JOHN P. CUSHMAN, *Vice-Chancellor of the third circuit.*

The Second Reformed Protestant Dutch
Church in the city of Albany,

v.

William Gorham, jr., Edwin Thomas,
John Thomas and Matthew M'Nair.

On reading and filing due proof of the publication of an order of this court

made in this cause on the twenty-seventh day of December, one thousand eight hundred and thirty-eight, requiring the defendant, William Gorham, junior, to cause his appearance therein to be entered, and notice thereof to be served on the complainant's solicitors within four months from the date of said order, and in default thereof, that the bill of complaint filed in this cause might be taken as confessed against him. And on reading and filing the affidavit of John V. L. Pruyn, one of the complainant's solicitors, whereby it appears that the said William Gorham, junior, has not appeared as required by said order: it is now ordered, on motion of Pruyn & Martin, the solicitors for the complainants, that the bill of complaint filed in this cause be, and the same is hereby, taken as confessed by the said William Gorham, junior; and the same having heretofore been taken as confessed by all the other defendants, [or, by, &c., as the case may be,] it is further ordered, that it be referred to one of the masters of this court, residing in the county of Albany, to compute and ascertain the amount due to the complainants on the bond and mortgage mentioned and referred to in said bill, and to take proof of the facts and circumstances stated in said bill; and he is hereby also directed to examine the treasurer of the complainants on oath, as to any payments that may have been made to them, or to any person for their use on account of the demand mentioned in said bill, and which ought to be credited thereon; and said master is required to report such proofs and examination to this court, and also to report upon the other matters hereby referred to him with all convenient speed.

(Copy.)

JOHN M. DAVISON, Clerk.

No. 257, Vol. II.—Page 141.

REPORT OF AMOUNT DUE.

*In Chancery,**To the Chancellor of the State of New-York.*

In pursuance of an order of this court, made in the above cause, and bearing date the day of in the year one thousand eight hundred and by which it was referred to one of the masters of this court to compute and ascertain the amount due to the complainant for principal and interest on the bond and mortgage mentioned and set forth in bill of complaint, filed in this cause, and report thereon to this court, with all convenient speed: I, Julius Rhoades, one of the masters of this court, residing in the city of Albany, do respectfully certify and report, that I have computed and ascertained the amount due to the complainant in this cause as aforesaid, and that the amount so due on the said bond and mortgage for the principal and interest, up to and including the date of this report, is the sum of

And I do further certify and report, that the schedule hereto annexed, marked A, and making a part of this my report, contains a statement and

account of the principal and interest moneys due to the complainant as aforesaid, the period of the computation of the interest and its rate, and to which, for greater certainty, I refer.

All which is respectfully submitted.

Dated

18

Master in Chancery.

Schedule marked A, referred to in the preceding Report.

One bond, dated _____ in the penal sum of \$
\$ _____ conditioned to pay \$ _____ as follows, viz.

which bond is accompanied by a mortgage of the same date.

Principal sum due, \$

Interest thereon from _____ to _____
being _____ year _____ month and _____ days, at seven per
centum per annum, is \$ _____

Amount due complainant 18 is . . \$ _____

Master in Chancery.

Report of amount due absent defendant.

(Title, No. 13.)

In pursuance of an order of this court made in the above cause, and bearing date the fourth day of May, in the year one thousand eight hundred and thirty-nine, by which it was referred to one of the masters of this court, to compute and ascertain the amount due to the complainants for principal and interest on the bond and mortgage mentioned and set forth in their bill of complaint filed in this cause, and to take proof of the facts and circumstances stated in the said bill, and to examine the treasurer of the complainants on oath as to any payments that may have been made to them, or to any person for their use on account of the debt secured by said bond and mortgage, and which ought to be credited thereon, and to report the amount due, together with such proofs and examinations, to this court with all convenient speed,

I, Julius Rhoades, one of the masters of this court, residing in the city of Albany, do respectfully certify and report, that I have computed and ascertained the amount due to the complainants in this cause as aforesaid, and that the amount so due on the said bond and mortgage for the principal and interest up to and including the date of this report, is the sum of eleven hundred and seven dollars and twenty-six cents.

And I do further certify and report, that the schedule hereto annexed marked A. and making a part of this my report, contains a statement and account of the principal and interest moneys due to the complainants as aforesaid, the period of the computation of the interest and its rate, and to which for greater certainty I refer.

And I farther certify and report, that I have taken proof of the facts and circumstances stated in the complainant's bill, and have examined the treasurer of said complainants, and have annexed said examination to this

my report, and I am of opinion that the several matters stated in said bill are true, the proofs produced before me being entirely documentary, I have not annexed them to this my report, but in lieu thereof an abstract of the same is hereto annexed. All which is respectfully submitted.

Dated, June 4th, 1839.

Master in Chancery.

Schedule marked A. referred to in the preceding report.

One bond dated October 28th, 1835, in the penal sum of \$2200 00, conditioned to pay \$1100 00 as follows, viz; three years from date, with interest payable semi-annually. Interest paid to April 30th, 1839. Which bond is accompanied by a mortgage of the same date.

Principal sum due,	\$1100 00
Interest thereon from May 1, 1839, to June 4th, 1839, being one month and 4 days, at seven per centum per annum, is	7 26

No. 259, Vol. II.—Page 144.

DECREE OF SALE, WHOLE AMOUNT DUE—PREMISES INDIVISIBLE.

(Title, No. 13.)

At, &c., (No. 13.)

On reading and filing the report of Julius Rhoades, one of the masters of this court, bearing date the thirteenth day of May, one thousand eight hundred and thirty-seven, to whom it was referred to compute the amount due to the complainant upon the bond and mortgage described in the bill of complaint filed in this cause; by which report it appears that there was due to the complainants at the date of said report, on the said bond and mortgage for principal and interest, the sum of six hundred and eighty dollars and seventy-five cents; and on reading and filing the affidavit of solicitor for the complainant, showing the regularity of the proceedings to take the bill in this cause as confessed, and on motion of S. S., of counsel for the complainants, it is ordered, adjudged and decreed, and the court, by virtue of the authority therein vested, doth order, adjudge and decree, that the said report and all things therein contained, do stand ratified and confirmed; and it is further ordered, adjudged and decreed, that all and singular the said mortgaged premises mentioned in the bill of complaint in this cause, and therein described as follows, to wit, *all, &c.*, be sold at public auction under the direction of one of the masters of this court, unless previous to said sale the said mortgagor pay said sum of six hundred and eighty dollars, and interest thereon from the thirteenth day of May, one thousand eight hundred and thirty-seven, and the complainants costs of this suit to be taxed, that the said sale be made in the county of Albany, where the said mortgaged premises are situated, that the said master give public notice of the time and place of such sale, according to the course and practice of this court, and that the complainant, or any of the parties in this cause, may become the purchaser of the mortgaged premises on the said sale, and that the said master pay to the complainant, or to his solicitor, out of the proceeds of such sale, his costs in this suit to be taxed; and also the sum of six hundred and eighty dollars, being the amount secured by the said bond and mortgage and unpaid as reported as aforesaid, together with the legal interest thereon from the date of the said report, or so much thereof as the purchase money of the mortgaged premises will pay of the same, and that the master take his receipt for the amount so paid, and filed the same with his report, and that he bring the surplus moneys arising from the said sale, if any there shall be, into court without delay, to abide the farther order of the court; and it is further ordered and decreed, that the purchaser or purchasers of the said mortgaged premises at such sale, be let into the possession thereof, and that any of the parties in this cause who may be in possession of the said premises, or any part thereof, and any person who since the commencement of this suit has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers on production of the master's deed for such premises, and a certified copy of the order confirming the report of the sale after such order has become absolute; and it is further ordered and decreed, that if the moneys arising from such sale are insufficient to pay the amount so reported as actually

decreed, that the defendant and all persons claiming or to claim from or under be for ever barred and foreclosed, of and from all equity of redemption, and claim, of, in and to the said mortgaged premises, and every part and parcel thereof. And it is further ordered and decreed, that the purchaser or purchasers of the said mortgaged premises at such sale, be let into the possession thereof; and that any of the parties in this cause, who may be in possession of the said premises or any part thereof, and any person who, since the commencement of this suit, has come in possession under them, or either of them, deliver possession thereof to such purchaser or purchasers, on production of the master's deed for such premises, and a certified copy of the order confirming the report of the sale, after such order has become absolute. And it is further ordered and decreed, that if the moneys arising from the said sale are insufficient to pay the amount so reported due to the complainant with the interest and costs as aforesaid, that the said master specify the amount of such deficiency in his report of the sale; and that on the coming in and confirmation of the said report, the defendant

who personally liable for the payment of the debt secured by the said mortgage pay to the complainant the amount of such deficiency, with interest thereon, from the date of such last mentioned report; and that the complainant have execution therefor. The description and particular boundaries of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to, or from the bill of complaint in this cause, are as follows, viz:

DECREE OF SALE.

Interest or an instalment only due, and premises indivisible.

S. J. R. }
v. } *Full title always.*
G. G. S. }

At, &c. (No. 13.)

The bill in this cause having been filed to foreclose a mortgage, and the whole amount secured thereby being not yet due according to the condition of the bond referred to in said mortgage, on reading and filing the report of J. R., one of the masters of this court, bearing date the day of one thousand eight hundred and to whom it was referred to compute the amount actually due to the complainant upon said bond and mortgage, according to the condition of said bond; and also to ascertain and report the amount secured to be paid by said bond and mortgage, and which remained unpaid, including interest thereon to the date of his report, and also to ascertain and report the situation of the mortgaged premises, and whether in his opinion the same could be sold in parcels without injury to the interests of the parties; by which report it appears that there was actually due to the complainant, at the date of said report, on the said bond and mortgage, for principal and interest, the sum of dollars and cents, and that the whole amount secured by said bond and mortgage, and remaining unpaid, including interest thereon to the date of

said report, is the sum of dollars and cents, and that the said mortgaged premises are so situated that they cannot, in the opinion of said master, be sold in parcels without injury to the interests of the parties for the reasons specified in said report; and on reading and filing the affidavit of P. C., solicitor for the complainant, showing the regularity of the proceedings to take the bill in this cause as confessed [by all of said defendants], and on motion of S. S., of counsel for the complainant, it is ordered, that said report, and all things therein contained, do stand ratified and confirmed; and it is further ordered and decreed, that all and singular the mortgaged premises mentioned in the bill of complaint in this cause, be sold at public auction, under the direction of one of the masters of this court, unless previous to the time fixed for such sale said mortgagor shall pay said sum of dollars and cents, and interest thereon from the day of the date of said report, and the complainant's costs of this suit to be taxed; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are situated; that such master give public notice of the time and place of such sale according to law and the course and practice of this court, and that any of the parties in this cause may become the purchaser of the mortgaged premises on such sale, and that such master pay to the said complainant or his solicitor, out of the proceeds of such sale, the complainant's costs of this suit to be taxed, and also the sum of dollars and cents, being the whole amount reported as secured by the said bond and mortgage, and now due, together with the legal interest thereon from the date of said report, or so much thereof as the purchase money of the mortgaged premises will pay; and that the master take receipts for the amounts so paid, and file the same with his report of such sale; and that he bring the surplus moneys arising from such sale, if any there shall be, into court without delay, to abide the further order of the court; and it is further ordered and decreed, that the purchaser or purchasers of the said mortgaged premises at such sale be let into the possession thereof, and that any of the parties in this cause who may be in possession of the said premises, or any part thereof, and any person who since the commencement of this suit has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers, on production of the master's deed for such premises, and a certified copy of the order confirming the report of said sale, after such order has become absolute. And it is further ordered and decreed, that the complainant be at liberty, as the principal of such mortgage (or, as the interest, or instalments payable hereafter upon such mortgage) shall become due, to apply to this court by petition, on any motion day, or in term, for an order for payment of the same out of the said surplus, so to be brought into court as aforesaid. And it is further ordered and decreed, that if the moneys arising from such sale shall be insufficient to pay the amount so reported as actually due the said complainant at the date of said report, with the interest and costs as aforesaid, that such master specify the amount of such deficiency in his report of the sale, and that on the coming in and confirmation of said report, the defendant G. G. S., who is personally liable for the payment of the debt secured by the said mortgage, pay to the complainant the amount of such deficiency, with

interest thereon from the date of the said report of sale, and that the complainant have execution therefor. And it is further ordered, adjudged and decreed, that the complainant be at liberty hereafter, as the instalments of principal or interest shall fall due, if no sale shall be had under this decree in consequence of said mortgagor paying the amount reported as actually due, with interest and costs as aforesaid, to go before a master on the foot of this decree, and obtain a report of the amount which shall be then due, to the end that upon the coming in and confirmation of such report, the complainant may apply to this court on any motion day, or at term, for an order for the sale of said premises, to satisfy the amount which shall be then due, with interest and the costs consequent upon such report and sale; and in case said premises shall be sold under this decree, and shall not produce sufficient to pay the amount above mentioned as secured and unpaid to said complainant, with interest and the costs of this suit, it is further ordered, that said complainant be permitted at any time hereafter, when any part of said debt not paid out of said proceeds shall have fallen due, according to the condition of said bond, to apply to this court for an execution against said G. G. S., to satisfy the amount which may then be actually due, according to the condition of said bond, with the costs consequent upon such application. The premises above referred to are described in said mortgage and in the bill of complaint, which is filed in this cause substantially as follows, viz: "All," &c.

Decree where interest or instalments only are due, and the premises can be sold in parcels.

(Title, No. 13.)

At, &c. (No. 13.)

This cause having this day been brought on to be heard upon the bill of complaint filed therein, taken as confessed by all for want of appearance, the said John M. Northrop, being an absentee, and an order for his appearance having been first duly published, and the other defendants having been personally served, and the subpoena served in this case, as is required by law, and upon the report of Julius Rhodes, one of the masters of this court, which report bears date on the thirteenth day of September instant, and was made in pursuance of an order of this court heretofore made in this cause, referring it to one of the masters of this court to compute the amount actually due to the complainant, on the bond and mortgage mentioned and set forth in said bill of complaint, and also to ascertain and report the amount secured to be paid by the mortgage referred to in said bill of complaint, and which remains unpaid, including interest thereon to the date of this report; also to ascertain and report the situation of the mortgaged premises, and whether in his opinion the same could be sold in parcels without injury to the interests of the parties; and if he should be of opinion, that a sale of said premises in one parcel would be most beneficial to the parties, then that he report his reasons for such opinion; also to take proof of the facts and circumstances stated in said bill of complaint, and to examine the complainant on oath as to any payments that may have been made to him, or to any person for his use on account of the debt secured by mortgage, and which ought to be credited thereon, and to report such proofs and examination to this court. On

reading and filing said report, proofs, and examination, upon which it appears that there was actually due to the said complainant at the date of the said report, for principal and interest, the sum of four hundred and two dollars and eighty-four cents, and that the amount secured to be paid by said bond and mortgage, and remaining unpaid with interest thereon to the date of said report, is the sum of one thousand and thirty-nine dollars and fifty cents; that said premises can be sold in two parcels, and that the facts stated in said bill are true. And on reading and filing the affidavit of George Palmer, the law partner of David Buel, junior, solicitor for the complainant, showing the regularity of the proceedings to take the bill in this cause as confessed; and on motion of M. Jacob Van Vechten, as counsel for the complainants, it is ordered, that the said report, and all things therein contained, do stand ratified and confirmed, and unless prior to the time fixed for the sale hereinafter mentioned, the amount reported as actually due to said complainant, with interests thereon from the date of such report, and the costs of this suit shall be paid, it is adjudged and decreed, that all and singular the said mortgaged premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount actually due to the complainant for the principal, interest and costs in this case, be sold at public auction, by or under the direction of one of the masters of this court, in two parcels, agreeably to the report of said master; that the said sale be made in the county where the said mortgaged premises are situated; that the master give public notice of the time and place of such sale according to the course and practice of this court, and that the complainant or any of the parties in this cause may become the purchasers; that the master execute a deed to the purchaser of the mortgaged premises on the said sale, and that the said master pay to the complainant, or his solicitor, out of the proceeds of the said sale, his costs in this suit to be taxed, and also the amount so reported as actually due as aforesaid, together with legal interest thereon from the date of the said report, or so much thereof as the purchase money of the same amounts to, and that the master take receipts for the money so paid, and that he file the same with his report, and that he pay the surplus money arising from the said sale of the first parcel of said premises, if any there be, into court, to be applied on account of the amount secured and unpaid by said bond and mortgage, and which will hereafter fall due according to the condition of said bond; and in case the parcel of said premises which shall be sold by such master shall not produce sufficient to pay the amount reported as actually due to said complainant as aforesaid, with interest thereon and the costs of this suit and of such sale, it is then further ordered, that such master proceed to sell the other parcel of said premises, and that he pay to said complainant, or his solicitor, so much thereof as shall be necessary to make up the deficiency aforesaid, and that he pay the residue of such proceeds, or so much thereof as shall be necessary, into court, to satisfy the amount secured to be paid and unpaid, and which according to the condition of said bond will hereafter fall due thereon; and in case the amount actually due to said complainant, with interest and the costs of this suit, shall be paid before such sale, or in case the first parcel of said premises which shall be sold by such master, shall produce sufficient

to pay the amount actually due to said complainant, with interest from the date of said report and the costs of this suit and of such sale; it is then further adjudged and decreed, that said complainant be at liberty, from time to time, as said instalments of principal or interest shall fall due according to the condition of said bond and mortgage, and shall remain unpaid, to proceed on the foot of this decree, and obtain a report of the amount which shall be then due and payable, to the end that upon such report being made to the court, an order may be thereupon entered for a sale of said premises, or the residue thereof, to satisfy what shall be reported due, with interest and the costs attending such report and sale; and it is further adjudged and decreed, that the defendants, and all persons claiming, or to claim from or under them, be for ever barred and foreclosed of and from all equity of redemption and claims of, in and to the said mortgaged premises, and every part and parcel thereof; and it is further adjudged and decreed, that the purchaser or purchasers of the said mortgaged premises at such sale, be let into the possession thereof, and that any of the parties in this cause who may be in possession of the said premises, or any part thereof, and any person who since the commencement of this suit has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers, on production of the master's deed for such premises, and a certified copy of the order confirming the report of such sale after such order has become absolute. The description and particular boundaries of the property authorized to be sold so far as the same can be ascertained from the mortgage above referred to, or the bill of complaint, are as follows, to wit.

DECREE.

Mortgagor an absentee. Whole amount not due. Premises divisible.

(Title, No. 13.)

(At, &c., No. 13.)

This cause having been this day brought on to be heard upon the bill complaint filed therein, taken as confessed by all the defendants for want appearance, the said John M. Northrop being an absentee, and an order for his appearance being first duly published as required by law, and the other defendants having been personally served with the subpoena issued in this cause, and upon the report of Julius Rhodes, one of the masters of this court, which report bears date on the thirteenth day of September instant, and was made in pursuance of an order of this court heretofore made in this cause, referring it to him as one of the masters of this court, to compute the amount actually due to the complainant on the bond and mortgage mentioned and set forth in said bill of complaint; and also to ascertain and report the amount secured to be paid by the bond and mortgage referred to in said bill of complaint, and which remains unpaid, including interest thereon to the date of this report; also to ascertain and report the situation of the mortgaged premises, and whether in his opinion the same could be sold in parcels without injury to the interests of the parties; and if he should be of opinion that a sale of said premises in one parcel would be most beneficial to the parties, then that he report his reasons for such opinion; also to take proof of the facts and circumstances stated in said bill of complaint, and to examine the complain-

ant on oath as to any payments that may have been made to him, or to any person for his use on account of the debt secured by said bond and mortgage, and which ought to be credited thereon, and to report such proofs and examination to this court. On reading and filing said report, proofs and examination, upon which it appears that there was actually due to the said complainant at the date of the said report, on account of the said principal and interest, the sum of four hundred and two dollars and eighty-four cents, and that the amount secured to be paid by said bond and mortgage, and remaining unpaid, with interest thereon to the date of said report, is the sum of one thousand and thirty-nine dollars and fifty cents; that said premises can be sold in — parcels, and that the facts stated in said bill are true. And on reading and filing the affidavit of George Palmer, the law partner of David Buel, junior, solicitor for the complainant, showing the regularity of the proceedings, to take the bill in this cause as confessed. And on motion of Mr. Jacob T. B. Van Vechten, of counsel for the complainant, it is ordered that the said report, and all things therein contained, do stand ratified and confirmed; and unless, prior to the time fixed for the sale hereinafter mentioned, the amount reported as actually due to said complainant, with interest thereon from the date of such report, and the costs of this suit shall be paid, it is adjudged and decreed, that all and singular the said mortgaged premises mentioned in the bill of complaint in this cause, and hereinafter described, or so much thereof as may be sufficient to raise the amount actually due to the complainant, for the principal, interest, and costs in this cause, be sold at public auction, by or under the direction of one of the masters of this court, in parcels, agreeably to the report of the said master; that the said sale be made in the county where the said mortgaged premises are situated; that the master give public notice of the time and place of such sale, according to the course and practice of this court, and that the complainant, or any of the parties in this cause, may become the purchaser, that the master execute a deed to the purchaser of the mortgaged premises on the said sale, and that the said master pay to the complainant, or his solicitor, out of the proceeds of the said sale, his costs in this suit to be taxed, and also the amount so reported as actually due as aforesaid, together with legal interest thereon from the date of the said report, or so much thereof as the purchase money of the mortgaged premises will pay of the same, and that the master take receipts for the amounts so paid, and file the same with his report; and that he pay the surplus moneys arising from the said sale of the first parcel of said premises, if any there be, into this court, to be applied on account of the amount secured and unpaid by said bond and mortgage, and which will hereafter fall due according to the condition of said bond; and in case the first parcel of said premises which shall be sold by such master shall not produce sufficient to pay the amount reported as actually due to said complainant as aforesaid, with interest thereon and the costs of this suit and of such sale, it is then further ordered, that such master proceed to sell the other parcel of said premises, and that he pay to said complainant, or his solicitor, so much thereof as shall be necessary to be paid to said complainant on account of or to satisfy the amount reported due as aforesaid, with interest,

and that he bring the surplus moneys arising from such sales, or either of them, if any there shall be after paying the whole amount reported due, with interest thereon from the date of said report, and the costs of this suit and of such sale, into the court without delay, to abide the further order of this court; and in case the amount actually due to said complainant, with interest and the costs of this suit, shall be paid before such sale, or in case the parcels of said premises which shall be sold by such master, shall produce sufficient to pay the amount actually due to said complainant, with interest from the date of said report, and the costs of this suit and of such sale, it is then further adjudged and decreed, that said complainant be at liberty, from time to time, as said instalments of principal or interest shall fall due, according to the condition of said bond, and shall remain unpaid, to apply by petition on the foot of this decree for a reference to a master, to obtain a report of the amount which shall be then due and payable, to the end that upon such report being made to the court, an order may be thereupon entered for a sale of said premises or the residue thereof, to satisfy what shall be reported as then due, with interest and the costs attending such petition, report and sale; and it is further adjudged and decreed, that the defendants and all persons claiming or to claim from or under them, be for ever barred and foreclosed of and from all equity of redemption, and claim of, in and to the said mortgaged premises, and every part and parcel thereof; and it is further adjudged and decreed, that the purchaser or purchasers of the said mortgaged premises, at such sale, be let into the possession thereof; and that any of the parties in this cause who may be in possession of the said premises, or any part thereof, and any person who since the commencement of this suit has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers, on production of the master's deed for such premises, and a certified copy of the order confirming the report of such sale, after such order has become absolute. The description and particular boundaries of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to, or from the bill of complaint in this cause, are as follows, *viz.*

No. 260, Vol. II.—Page 145.

TERMS OF SALE.

Conditions of sale of the property described in the annexed notice.

Ten per cent of the purchase money is to be paid to the master in chancery at the time of the sale. The residue at the master's office

on the day of when the
deed will be delivered, or as soon thereafter as the decree shall be enrolled. The auctioneer's fee of ten dollars for each parcel separately sold, to be paid by the purchaser. The biddings will, at the option of the master, be kept open until the 10 per cent is paid. The property is sold free of incumbrances,

and all taxes and assessments are to be paid out of the purchase moneys, provided bills thereof are furnished to the master before the completion of the sale. The purchaser will be charged with interest on the whole amount of his bid, if payment in full is not made on the day fixed for the delivery of the deed.

I acknowledge that I have purchased the above described premises on the foregoing conditions, for the sum of

and I do agree to conform to the said conditions of sale, having already paid the said ten per cent.

No. 261, Vol. II.—Page 145.

(See ante, No. 238.)

No. 262, Vol. II.—Page 147.

MASTER'S DEED.

This indenture, made the _____ day of _____ in the year one thousand eight hundred and thirty _____ between _____ one of the masters in chancery in and for the state of New-York, dwelling in _____ of the first part, and

of the second part: whereas, at a court of chancery held for the state of
New-York, at _____ on the _____ day of _____
_____ in the year one thousand eight hundred and thirty
before _____

it was, among other things, ordered, adjudged and decreed, by the said court, in a certain cause then depending in the said court, between defendants, that the mortgaged premises mentioned

defendants, that the mortgaged premises mentioned and set forth, or referred to, in the bill of complaint in the said cause, and hereinafter particularly described, be sold by or under the direction of one of the masters of the said court, at public auction, in the county where the said mortgaged premises,

are situated; that the said master first give public notice of the time and place of such sale, with a brief description of the said mortgaged premises, according to the course and practice of said court. And whereas the said

master in chancery, and party of the first part to these presents, in pursuance of the order and decree of the said court of chancery, did, on the day of the date of these presents, sell at public auction, at the said mort-

gaged premises hereinafter particularly described, having first given public notice of the time and place of such sale, with a brief description of the said mortgaged premises, agreeable to the order aforesaid; at which sale the said premises were struck off to the said party of the second part to these presents, for the sum of _____ that being the

highest sum bidden for the same. Now therefore this indenture witnesseth, that the said master in chancery as afore-

said, and the party of the first part to these presents, in order to carry into effect the said sale, so made as aforesaid in pursuance of the decree of the said court of chancery; and also by virtue of the statute in such cases made and provided, and in consideration of the premises, and of the sum of paid by the said party of the second part to these presents to the said

master in chancery as aforesaid, the receipt whereof he doth hereby acknowledge, hath granted, bargained and sold, aliened, released, conveyed and confirmed, and by these presents doth grant, bargain and sell, alien, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns, for ever, all

together with all and singular the rights, titles, privileges, members, hereditaments and appurtenances to the same belonging, or in any wise appertaining. To have and to hold all and singular the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns, for ever.

In witness whereof, I, the said
 master in chancery, have hereunto set my hand and seal, the day and year
 first above written.

*Sealed and delivered
in the presence of*

Master in Chancery.

State of New-York, }
County, ss. }

On this day of
in the year one thousand eight hundred and thirty before me, the sub-
scriber, appeared
master in chancery, who acknowledged that he executed the within instru-
ment: and I certify, that I know the person who made the said acknowledg-
ment to be the individual described in, and who executed the said instrument.

No. 263, Vol. II.—Page 147(a.)

REPORT OF SALE.

(Title No. 13.)

*In Chancery.**To the Chancellor of the State of New-York.*

In pursuance and by virtue of a decretal order of this court, made in the above cause, by the _____ and bearing date the ____ day of _____ in the year one thousand eight hundred and thirty _____ by which it was, among other things, ordered, adjudged and decreed, that all and singular the mortgaged premises mentioned in the bill of complaint in this cause, and hereinafter described, or so much thereof as might be sufficient to raise the amount reported due to the complainant as therein mentioned, for principal and interest, and the costs in this cause, and which might be sold separately without material injury to the parties interested, be sold at public auction, by or under the direction of one of the masters of this court; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are situated; that the master give public notice of the time and place of such sale, according to the course and practice of this court, and that the complainant or any of the parties in this cause, might become the purchaser; that the master execute a deed to the purchaser of the mortgaged premises on the said sale; and that the said master pay to the said complainant or _____ solicitor, out of the proceeds of the said sale, costs in this suit to be taxed, and also the amount so reported due as aforesaid, together with legal interest thereon from the date of the said report, or so much thereof as the purchase money of the mortgaged premises would pay of the same, and that the master take receipts for the amounts so paid, and file the same with his report; and that he bring the surplus moneys arising from the said sale, if any there should be, into court, without delay, to abide the further order of the court. And whereby it was further ordered and decreed, that if the moneys arising from the said sale should be insufficient to pay the amount so reported due to the complainant with the interest and costs as aforesaid, that the said master specify the amount of such deficiency in his report of the sale—I, the subscriber, one of the masters of this court, residing in the city of Albany, do respectfully certify and report, that having been charged by the solicitor for the complainant with the execution of said decretal order, I advertised said premises to be sold by me at

on the _____ day of _____ in the year one thousand eight hundred and thirty _____ that previous to said sale, I caused notice thereof to be publicly advertised for six weeks successively, as follows, viz: by causing a printed notice thereof to be fastened up, in three public places in the _____ where such premises were to be sold,

(a) See bill of strict foreclosure, post, 263 A.

and by causing a copy of such notice to be printed once in each week during the six weeks immediately preceding said sale, in a public newspaper printed in said county of _____ which notices contained a brief description of the said mortgaged premises.

And I do further report, that on said _____ day of _____ in the year one thousand eight hundred and thirty _____ the day on which the said premises were so advertised to be sold as aforesaid, I attended at the time and place fixed for said sale, and exposed said premises for sale, at public auction, to the highest bidder, and the said premises were then and there fairly struck off to

_____ he being the highest bidder therefor, and that being the highest sum bidden for the same.

And I do further certify and report, that I have executed, acknowledged and delivered to said purchaser the usual master's deed for said premises, and have paid over or disposed of the purchase moneys, or proceeds of said sale, as follows, viz: I have paid to the solicitor for the complainant the sum of _____ being the amount of _____ costs of this suit as taxed, and have taken a receipt therefor which is hereto annexed.

I have also retained in my hands the sum of _____ being the amount of my fees, commissions, and disbursements on said sale, as will appear by reference to the statement of the items thereof annexed to this my report, and to which I refer. And I have paid to the solicitor for the complainant the sum of _____ and have taken a receipt therefor, which is hereto annexed.

And I do further certify and report, that the premises so sold and conveyed as aforesaid, were described in said decretal order, and in the deed so executed by me as aforesaid, as follows, viz:

Statement of Master's fees, commissions, and disbursements, on the sale referred to in the preceding report, and which are not taxed in the costs of the complainant's solicitor.

(Title, No. 13.)

I certify, that the decree in the

above entitled cause is enrolled.

Register's office,

183

(Title, No. 13.)

Received, Albany,

183 of

the master who made the sale of the premises under and by virtue of the decree in the above entitled cause, the sum of

[\$ _____] being the amount of my costs in said cause as taxed, which costs are paid to me by said master, under and by virtue of the provisions of said decree.

Solicitor for the Complainant.

(Title No. 13.)

Received, Albany 183 of
 the master who made the sale of the premises under and by virtue of the
 decree in the above entitled cause, the sum of
 [\$] which sum being part of the proceeds of the sale of said premises,
 is received by me under and by virtue of the provisions of said decree,
 the amount decreed to be paid to said complainants,
 with interest thereon as mentioned in said decree.

Solicitor for the Complainant.

No. 264, Vol. II.—Page 148.

In Chancery.

Before the Vice-Chancellor.

A. J., guardian of the persons and
 estates of G. I. and H. J., infants, }
 v.
 S. R. and M. his wife, J. L. G., }
 and others.

State of New-York, }
 City and County of New-York, } ss.

J. L. G., a defendant in the above entitled cause, being duly sworn, saith,
 that the surplus of the purchase money of the premises sold under the de-
 cretal order in this cause, being the sum of three hundred and eighty-five dol-
 lars, or thereabouts, has been paid into court by the master under whose direc-
 tion such sale was made and now remains there, and that he, this defendant,
 is entitled to the whole of the same by reason of his holding various judg-
 ments against the said S. R., which formed the next lien in legal priority,
 upon such premises after the satisfaction of the mortgage held by the com-
 plainants.

Sworn, this day of }
 January, 1839, before me, }

ORDER AS TO SURPLUS.

In Chancery,

Before the Vice-Chancellor.

A. J., guardian of the persons and
 estates of George, and James, and
 Henry I., infants, }
 v.
 S. R. and M. his wife, J. L. G., }
 and others.

At a Court of Chancery, held for the state of New-York, at the city of New-York, on the day of January, eighteen hundred and thirty-nine.

Present:

WILLIAM T. McCOUN, *Vice-Chancellor*.

Upon reading and filing the affidavit of J. S. G. a defendant above named, that the surplus of the purchase money remaining in court arising from the sale of the mortgaged premises sold in this cause belongs to him, and on motion of Mr. Hoffman, of counsel for said G., it is ordered, that it be referred to David Codwise, one of the masters of this court, residing in the city of New-York, to ascertain and report the amount due to such defendant, or to any other person, and which is a lien upon such surplus moneys, and to ascertain the priorities of the several liens thereon. And it is further ordered, that such master summon before him, upon such reference, all the defendants who have appeared in the said cause, as well as every person who has left written notice of his claim to such surplus moneys with the clerk of this court, and that he report with all convenient speed.

In Chancery.

Before the Vice-Chancellor.

A. I., Guardian of the persons and
estates of G. I. and H. I., infants,
v.
S. R. and Maria his wife, J. L. G.,
and others.

I certify that the following defendants have respectively entered an appearance in this cause, viz :

And I further certify, that no written notice of a claim to the surplus moneys in this cause has been filed with me, except the notice contained in the affidavit of the defendant J. L. G.

New-York, January 1839.

No. 263 A, Vol. II.—Page 149. (1)

BILL FOR STRICT FORECLOSURE.

In Chancery :

Before the Vice-Chancellor.

To the Chancellor of the State of New-York.

Humbly complaining, shows unto your honor, your orator E. W., of the city of New-York, counsellor at law, that on or about the 24th day of May,

(1) An error occurred in numbering in the text. This should have been 265.

1829, one J. G. W., of the city of New-York, being, or claiming to be, seised of the premises hereinafter mentioned, borrowed a sum of money, amounting to \$500, of one C. D., of Kingston, in the county of Ulster, and to secure payment of the same, executed to the said C. D. his certain bond or obligation bearing date the day and year last aforesaid, in the penal sum of \$1000, conditioned for the payment of the said sum of \$500, with lawful interest thereon, in sixty days from the date and execution of such bond or obligation; and for further securing the payment of such sum of money, the said J. G. W. and Sarah C. his wife, by indenture of mortgage, bearing date the day and year last aforesaid, made and executed by and between the said J. G. W. and Sarah C. his wife, of the first part, and the said C. D. of Kingston, in the county of Ulster, of the second part, did grant, bargain and sell, and convey unto the said party of the second part, his heirs and assigns, *all, &c.*, which indenture of mortgage had the usual provision of redemption therein contained; and your orator further shows, that such indenture of mortgage was duly acknowledged by the parties thereto, and thereupon was recorded in the office of register in and for the city and county of New-York, in liber of mortgages, p. as by the record thereof will on reference appear.

And your orator further shows, that on or about the 16th day of March, in the year one thousand eight hundred and thirty-one, the said C. D. filed his bill in this court setting forth the execution of the bond and mortgage aforesaid upon the premises herein before described, and that no part of the money mentioned in the condition of such bond had been paid; and also setting forth, that on or before the 1st of January, 1828, one A. A., of the city of New-York, was seised of the said premises, and being indebted to C. P., &c., trustees of one P. D., then lately deceased, in the sum of \$300, executed and delivered to them his certain bond and obligation conditioned for the payment of the said sum of \$300, and did also execute and deliver to them an indenture of mortgage of and upon the premises aforesaid, which indenture of mortgage was recorded on or about the 20th day of January, 1829, in lib. of register of mortgages, p. and before the indenture of mortgage was executed and delivered to the said C. D. as aforesaid, and was by him in his said bill of complaint admitted to be entitled to a preference.

And your orator further shows, that in and by the said bill of complaint it was set forth and alleged, that the said J. G. W., on or about the 17th day of July, in the year 1829, together with Sarah C. his wife, by indenture bearing date the said day and year last aforesaid, granted, bargained, sold, and conveyed unto one H. A. W., of the city of New-York, all and singular the aforesaid premises, with the appurtenances, to have and to hold to him, the said H. A. W., his heirs and assigns for ever. And that such indenture being duly acknowledged by the parties thereto, was duly recorded in the office of register in and for the city and county of New-York, in liber 253, of Conveyances, p. And in and by such bill of complaint, it was further shown, that on or about the 10th day of April, 1830, the said H. A. W. and Elizabeth his wife, by indenture bearing date the day and year aforesaid, granted, bargained and sold, and conveyed the said above described premises, and all his right, title and interest therein and thereto to one J. W., to have and to hold to him, his heirs and assigns, which indenture being duly

acknowledged, is recorded in the office of register in and for the city and county of New-York, in liber of Conveyances, page as by such record on reference will appear. And, in such bill of complaint it was further set forth, that the complainant therein had been lately informed that the said J. W. had lately died, and had devised the said premises to one M. W., who claimed some interest in the said premises by virtue of the said devise; and also that there were some assessments, or some such incumbrances imposed under and by authority of the corporation of the said city of New-York, upon such premises which were unpaid, and were a lien upon the same, and were entitled to a preference before the mortgage of such complainant, but what was the amount of such assessments he could not state. And in and by such bill of complaint it was prayed, that the said J. G. W. might be decreed to pay to such complainant the said principal sum of \$500, with all the interest moneys due, or to grow due, thereon, and all the costs and charges of the complainant in that behalf sustained by a short day to be appointed by this court, and in default thereof, that the said J. G. W. and S. his wife, and all and every other person or persons whatsoever claiming or to claim the said premises, or any part thereof, by, from, or under them, or any or either of them, might be foreclosed, of and from all equity of redemption and claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances. And that the said mortgaged premises, with the appurtenances, or so much thereof as may be sufficient to raise the said sum of \$500, might by the order and decree of this court be sold, and that out of the moneys arising from such sales the said complainant might be paid all the principal and interest moneys due, or to grow due, upon the said bond or obligation, and secured by such indenture of mortgage; and also all the costs and charges of such complainant in that behalf sustained, and that such complainant might have such other and further relief in the premises, as should be agreeable to equity and good conscience. And thereupon such bill of complaint prayed process of subpoena in the usual form against J. G. W. and S. C. his wife, C. P., &c., trustees as aforesaid, A. A. and M. W., as by such bill of complaint on file in the office of the clerk of this court, will on reference appear.

And your orator further shows, that all and each of the allegations, statements and charges contained in the said bill of complaint are true, except the statement and allegation therein contained, that the said James Wells named therein had devised the aforesaid premises to one Mary Wells, who claimed some interest in the same by virtue of the said devise, and your orator prays that such statements, allegations and charges, except as aforesaid, may be taken as part of this bill of complaint.

And your orator further shows unto your honor, that such proceedings were had under the bill aforesaid, as that the same was taken as confessed against all the defendants named therein. And further, that on or about the twelfth day of November, in the year 1831, the trustees of the estate of P. D. having been paid by the before named A. A., the amount due upon the bond mortgage herein before mentioned, as held by such trustee, an order was entered in such cause as follows, to wit: At a court of chancery, held for the

state of New-York, at the city of New-York, on the 12th of November, 1831, present, Wm. T. McCoun, vice-chancellor—the above named C. P., &c. having been made parties defendants in this suit, on account of being trustees of the estate of the late P. D., deceased, and as such trustees being the holders of a first mortgage upon the premises mentioned and described in the bill filed in this cause, which said mortgage had been given to the said P. D., or to his said trustees, and was at the time of filing the said bill a lien upon the said premises; and the said mortgage having lately been paid off, discharged and satisfied to the said trustees, being now no longer a lien upon the said premises, it is ordered, on motion of Mr. F., solicitor for the complainants, that the names of the said C. P., &c., be henceforth omitted in the proceedings of this cause, and that they be no longer made or considered as parties thereto.

And your orator further shows, that in pursuance of an order of reference duly entered in such cause, a report was made by S. C., a master of the court, on the 23d day of November, in the year 1831, whereby it was, among other things, in substance reported, that there was due upon the bond and mortgage mentioned in the bill of complaint at the date of such report, the sum of five hundred and seventy-one dollars and five cents, for principal and interest. And further, that upon the coming in of such report, a decretal order by this court was made on the 23d day of November, 1831, whereby it was, in substance, among other things ordered, adjudged and decreed, that such report be confirmed, and that all and singular the said mortgaged premises mentioned and described in such bill of complaint, with the appurtenances, be sold at public auction by and under the direction of one of the masters of this court, the said master giving public notice of time and place of the sale thereof, according to the course and practice of this court. And that such master execute a deed of the said premises to the purchaser or purchasers thereof, as by such decretal order of record, in the office of clerk of this court, will on reference appear.

And your orator further shows, that all and singular such mortgaged premises were sold at public auction, at the city of New-York, on the 28th day of December, in the year 1831, under the direction of S. C., one of the masters of this court, the said master having given public notice of such sale required by such decretal order, that at such sale the said premises were bought by your orator for the sum of nine hundred and eighty dollars, that being the highest sum bid for the same. And that the said S. C., master as aforesaid, in and by a deed of indenture, bearing date the 19th day of January, in the year 1832, made and executed by and between the said S. C., one of the masters in chancery for the state of New-York of the first part, and your orator, by the name and description of E. W., of the city of New-York, counsellor at law, of the second part, after in part reciting the decretal order of the court of chancery aforesaid; and that he, the said master, in pursuance thereof, did on the 28th day of December then last, sell at public auction at the Merchants' Exchange, in the city of New-York, in one parcel, all and singular the said mortgaged premises therein after particularly described, having given due notice thereof, at which sale all such premises were struck off to your orator, the party thereto of the second part for the sum of \$980, that being

the highest sum bidden; and he being the highest bidder for the same. Therefore, such indenture witnessed that the said master in chancery, and party thereto of the first part, in consideration of the premises and of the said sum of \$980, paid by your orator the party of the second part, had granted, bargained and sold, aliened, conveyed and confirmed, and by those presents did grant, bargain and sell, alien, convey and confirm unto your orator, the party thereto of the second part his heirs and assigns for ever the said premises. As by such indenture in your orator's possession, and ready to be produced as this court shall direct, or by the record thereof recorded in the office of register in and for the city and county of New-York, in lib. 28 of Conveyances, page 477, will on reference appear.

And your orator further shows unto your honor, that out of the purchase money of such premises, paid by your orator to such master, there was paid for taxes and assessments upon the same then accrued and due, the sum of four dollars and ten cents, and for assessments laid and imposed upon the same, and then due and unpaid, the sum of four hundred and sixty dollars and twelve cents. And further, that the residue of such purchase money, viz. the sum of \$514 98 was insufficient to pay the amount due to the complainant in such suit, for principal and interest, upon such bond and mortgage held by him exclusive of the costs of suit.

And your orator further shows, that the said C. D., in and by a certain instrument of assignment, dated the 8th day of November, in the year 1833, executed by him of the first part, and your orator of the second part, for and in consideration of the sum of one dollar to him in hand paid, did grant, bargain and sell, assign, transfer and set over unto your orator, the said indenture of mortgage, dated the said 23d day of May, 1829, made by J. G. W. and S. his wife as aforesaid, together with the bond or obligation therein described, and the money due, or to grow due thereon, with the interest, as by such instrument of assignment now in your orator's possession and ready to be produced as this court shall direct, will on reference appear.

And your orator further shows, that the said J. W. before named, died as stated in such bill of complaint, and that he left a last will and testament, whereby, after directing his debts and funeral expenses to be paid, he gave and bequeathed all the rest and residue of his estate, both real and personal, to his beloved wife M. W. But your orator charges, that such will being dated on or about the third day of November, in the year 1826, did not pass the premises herein before mentioned, which were purchased by and conveyed to the said J. W., on the 10th day of April, 1830, as hereinbefore mentioned. And your orator further shows, that such premises descended upon the death of the said J. W. to one T. W., his father, and heir at law, in whom the equity of redemption became and now remains vested. And your orator hath in a friendly manner applied to the said T. W. and requested him to pay to your orator the said sum of \$980 so paid by your orator as aforesaid, upon the purchase of such premises and of the estate, right, title and interest of the said C. D., therein and thereto, with lawful interest thereupon, and all the taxes, assessments or charges upon the same, subsequently paid by your orator, or to release his right and equity of redemption in such premises to your orator. And your orator hoped he would have complied with such

reasonable requests. But now so it is, may it please your honor, that the said T. W., combining and confederating with others, to your orator unknown, but who, when discovered, may be made parties to this bill, with apt words to charge them, how to deceive and defraud your orator in the premises, hath wholly refused either to pay your orator such sum of money and interest and charges, or to release to him his right and equity of redemption in and to such premises. In consideration whereof, and forasmuch as your orator is remediless in the premises by the strict rules of common law, and can only have adequate and proper relief in this honorable court where matters of this kind are properly cognizable. To the end, therefore, that the said T. W. and his confederates, when discovered, may upon his and their corporal oath and oaths, full, true and perfect answer make, to all and singular the premises, and that in a full and perfect a manner as if the same were herein repeated paragraph by paragraph, and he and they particularly interrogated thereto. And that an account may be taken by and under the decree and direction of this honorable court, of what is due and owing to your orator, for principal and interest on the purchase and mortgage aforesaid, and that the said T. W. may be decreed to pay to your orator, what may be found due to him on taking such amount as aforesaid, together with his cost for this suit, by a short day appointed by this honorable court for that purpose: or, in default thereof, that the said defendant T. W., and all persons claiming under him, may be absolutely debarred and foreclosed of and from all rights and equity of redemption, in or to the said mortgaged premises and every part thereof, and may deliver up to your orator all deeds, papers or writings, in his custody or power, relating to or concerning the said mortgaged premises or any part thereof.

May it please your honor to grant unto your orator the people's writ of subpoena, issuing out of and under the seal of this court, directed to the said T. W., commanding him by a day and under a penalty to be therein inserted, to be and appear in this honorable court, then and there to answer the premises, and to stand to and abide such order and decree of this court, as shall be made therein, and shall be agreeable to equity. And your orator, &c.

(Usual Jurat.)

No. 264 A, Vol. II.—Page 151.

DECREE OF STRICT FORECLOSURE.

*In Chancery.**Before the Vice Chancellor.*

Edmund Wilkes

v.

Thomas Wells, by Seth P. Staples, his guardian *ad litem*.

At a Court of Chancery, held in the State of
New-York, at the City of New-York, on
the day of in the year
eighteen hundred and thirty-seven.

Present:

WILLIAM T. McCOUN, *Vice-Chancellor*.

This cause coming on to be heard upon the bill of complaint, and the answer of the above named defendant, an alleged lunatic, by Seth P. Staples, Esquire, his guardian *ad litem*; and counsel for the complainant and the said guardian having been heard, it is ordered, adjudged and decreed, and this court doth order, adjudge and decree, that it be referred to one of the masters of this court, to compute and ascertain what is due to the complainant for principal and interest upon the amount paid for taxes and assessments, upon the premises mentioned in the bill of complaint out of the sum of \$980, the purchase money of such premises, given and advanced by the complainant at the master's sale set forth in such bill, and also to compute and ascertain the amount due for principal and interest upon the bond and mortgage, bearing date the 23d day of May, 1829, mentioned in such bill. And such master is also to take an account of any rents and profits of said premises received by such complainant, or by any person to his use; and what shall appear to be the balance of such rents and profits, shall be deducted out of the sum which the master shall find due for principal and interest aforesaid. And it is further ordered, that the complainant's costs in this cause be taxed, and be specified in such report, and added to the amount which shall be found due for principal and interest aforesaid. And upon the defendant paying to such complainant the amount which shall be found due for principal, interest, and costs as aforesaid, within six months after service of a copy of such report duly confirmed, and a copy of this decree upon the said Seth P. Staples, guardian *ad litem*, then that such complainant do execute and deliver a proper instrument of conveyance of the said premises to such defendant, to be approved of by the said master, in case the parties differ respecting the same, and do cancel and satisfy of record such mortgage if thereto required. But in default of such defendant, or some one on his behalf, paying to the complainant, or his solicitor, what shall be so reported due for principal, interest and costs, within the period aforesaid, then it is ordered, adjudged and decreed, that such defendant do stand absolutely debarred, and foreclosed of and from all equity of redemption of, in and to the said premises included in the mortgage mentioned in the bill of complaint, and which premises are described as follows, to wit:

No. 265, Vol. II.—Page 155.

ORDER OF FORECLOSURE ABSOLUTE.

In Chancery,
Before the Vice-Chancellor.
 Edmund Wilkes

v.

Thomas Wells, by Seth P. Staples,
 his guardian *ad litem*.

At, &c.

It appearing to this court that a decree was heretofore made upon the hearing of this cause, on the 24th day of November, 1834, whereby it was referred to David Codwise, one of the masters of this court, to compute and ascertain what is due to the complainant for principal and interest, upon the amount paid for taxes and assessments upon the premises mentioned in the bill of complaint, out of the sum of nine hundred and eighty dollars, the purchase money of such premises, given and advanced by the complainant at the master's sale, set forth in such bill, and also to compute and ascertain the amount due for principal and interest, upon the bond and mortgage, bearing date the twenty-third day of May, eighteen hundred and twenty-nine, mentioned in such bill, and also to take an account of any rents and profits of said premises, received by the said complainant, or any person to his use, and what shall appear to be the balance of such rents and profits, shall be deducted out of the sum which the master shall find due for principal and interest aforesaid. And further, that the complainant's costs in this cause should be taxed, and be specified in such report, and added to the amount which should be found due for principal and interest aforesaid. And upon the defendant paying to such complainant the amount which shall be found due for principal and interest and costs as aforesaid, within three months after service of a copy of such report, duly confirmed, and a copy of this decree upon the said Seth P. Staples, guardian *ad litem*, then that such complainant do execute and deliver a proper instrument of conveyance of the said premises to such defendant, to be approved of by the said master, in case the parties differ respecting the same, and do cancel and satisfy of record such mortgage, if thereto required. But in default of such defendant, or some one on his behalf paying to the complainant or his solicitor what shall be so reported due for principal and interest, and costs, within the period aforesaid, then, it was ordered, adjudged and decreed, that such defendant do stand absolutely debarred and foreclosed of and from all equity of redemption, of, in and to the said premises included in the mortgage mentioned in the bill of complaint. And it further appearing, that the said master made his report in the premises, on the 15th day of January, 1835, whereby he certified that there was due to the above named complainant, the sum of \$1311 69 for principal, interest and costs upon, and by virtue of the said mortgage, which report was by an order of this court, dated the day of 1835, duly confirmed, and it also appearing by the affidavit of Henry H. Lambert, now filed, that certified copies of such report, and of the order confirming the same, and of

the said decretal order, were served personally upon the said Seth P. Staples, guardian, as aforesaid, on the 13th day of February, 1835. And it also appearing from an affidavit of such complainant, now filed, that he hath not been paid such amount, nor any part thereof. Thereupon, on motion of Murray Hoffman, counsel for such complainant, it is ordered and decreed, that the said defendant, Thomas Wells, do stand absolutely debarred and foreclosed of and from all right, title, interest, equity and benefit of redemption, of, in and to the said mortgaged premises, as the same are described in the said decree of the 24th of November, in the year 1829.

No. 265, A. Vol. II.—Page 155.

ORDER ABSOLUTE ON STRICT FORECLOSURE.

In Chancery,
Before the Vice-Chancellor.

E. W.

v.

T. W., by S. P. S., his
 guardian, *ad litem*.

At, &c.

It appearing to this court that a decree was heretofore made upon the hearing of this cause, on the 24th day of November, 1834, whereby it was referred to D. C., one of the masters of this court, to compute and ascertain what is due to the complainant for principal and interest, upon the amount paid for taxes and assessments, upon the premises mentioned in the bill of complaint, out of the sum of nine hundred and eighty dollars, the purchase money of such premises, given and advanced by the complainant at the master's sale set forth in such bill, and also to compute and ascertain the amount due for principal and interest upon the bond and mortgages, bearing date the twenty-third day of May, eighteen hundred and twenty-nine, mentioned in such bill. And further, that the complainant's costs in such cause, should be taxed and be specified in such report, and added to the amount which should be found due for principal and interest aforesaid. And upon the defendant paying to such complainant the amount that shall be found due for principal and interest, and costs as aforesaid, within three months after service of a copy of such report duly confirmed, and a copy of this decree upon the said S. P. S., guardian *ad litem*, then that such complainant do execute and deliver a proper instrument of conveyance of the said premises to such defendant, to be approved of by the said master, in case the parties differ respecting the same, and to cancel and satisfy of record, such mortgage if thereto required. But in default of such defendant, or some one in his behalf, paying to the complainant, or his solicitor, what shall be so reported due for principal and interest and costs, within the period aforesaid, then it is

And it further appearing, that the said master made his report in the premises on the 15th day of January, 1835, whereby he certified that there was due to the above named complainant, the sum of \$1811 69 for principal and interest and costs, upon and by virtue of the said mortgage, which report was by an order of this court, dated the day of

No. 266, Vol. II.—Page 156.

BILL FOR REDEMPTION.

To, &c.

And your orator further shows, that on or about the said 25th day of April, in the year 1814, your orator being indebted to one L. M., then of the city of New-York, in a large sum of money, it was agreed by and between your orator and the said M., that your orator should transfer the aforesaid lot of ground and premises to the said M., by way of mortgage, for the purpose of securing him the amount in whole or in part of such indebtedness. That in pursuance of such agreement, your orator, on or about the said 25th day of April, in the year 1814, by an indenture bearing date such day and year aforesaid, did, for and in consideration of the sum of eleven thousand dollars, expressed therein as the consideration thereof, grant, bargain, and sell unto the said L. M., his heirs and assigns, the said lot of land and premises hereinbefore mentioned and particularly described. To have and to hold the same, with the appurtenances, to him, his heirs and assigns for ever, as by such indenture of, or the record thereof, duly recorded in the office of

the register in and for the city and county of New-York, in liber No. 106 of Conveyances, page 343, will on reference appear.

And your orator further shows unto your honor, that such conveyance, although absolute in its face, was intended, executed and received solely as a security or mortgage for the payment of the balance, which upon a settlement of accounts might be found due from your orator to the said L. M. And further, that the said M. hath repeatedly admitted and declared in writing, by instruments or papers in his own hand-writing, or signed by him, that such indenture was made and intended, and was held only as such mortgage or pledge.

And your orator further shows, that after the execution and delivery of the said indenture, your orator continued in the possession of the said premises, and receipt of the rents and profits thereof, and by and with the knowledge and assent of the said M. executed a lease for a part thereof to H. H. and C. P., for the period of five years, from the first of May, eighteen hundred and sixteen, for the yearly rents of fifteen hundred dollars, and which lease bears date the thirtieth day of April, eighteen hundred and sixteen, as by such lease in your orator's possession, and ready to be produced as this court shall direct, will on reference appear.

And your orator further shows unto your honor, that the account between your orator and the said M., continued an open and current account from the said twenty-fifth of April, eighteen hundred and fourteen, your orator occasionally receiving monies on account of the said M., and making payments to or becoming entitled to credits with him. And further, that on or about the fourth of May, eighteen hundred and twenty-one, the said M. having determined to leave the city of New-York for France, there to reside, and your orator not being then able to pay off the balance due to him, for which such indenture and the premises therein contained were pledged, it was agreed for the convenience of all parties that the said M. should place the said premises in the name of J. B., of the city of New-York, who should take a conveyance of the same in his own name, and execute a mortgage thereof to the said M., without however in any degree affecting or impairing the rights of your orator. That in pursuance of such arrangement, your orator did fully and particularly inform the said J. B. of the situation of such premises, and your orator's rights and interests therein, and of the intended arrangement between your orator and the said M., and especially that it was expressly and distinctly agreed by and between your orator and the said M., that the conveyance so to be made to the said B., and the mortgage to be executed by the latter to the said M., should not affect or vary the relation between your orator and the said M. as to such premises, but that such relation as mortgagor and mortgagee should remain unimpaired, and that the said B. should, in fact, be only the representative of the said M. in his the said M.'s character of mortgagee.

And your orator further shows, that the said B. was fully apprized of the premises, and did thereupon assent to become the attorney or agent of the said M., for the purpose of preserving the rights and interests of the said M. in the premises as such mortgagee, and thereupon to carry such agreement into effect, the said M., in and by a certain indenture bearing date the fourth

day of May, eighteen hundred and twenty-one, made and executed by and between the said L. M. of the first part, and the said J. B. of the second part, for and in consideration of the sum of twelve thousand dollars, &c. [Recital of the deed from M. to B., and its record.]

And your orator further shows, that the said J. B., on or about the said fourth day of May, eighteen hundred and twenty-one, did make, execute, and deliver to the said L. M., an indenture of mortgage upon the said premises, bearing date on or about the day and year last aforesaid, for securing the sum of twelve thousand dollars, to be paid to the said M., but which indenture of mortgage was never registered as your orator charges.

And your orator further shows, that such mortgage was executed and delivered by the said B., solely to fulfil the arrangements and agreements between your orator and the said M. as aforesaid, and that the said B. did not pay to the said M., or account for with him for the purchase money expressed in the deed to him the said B. before recited, nor any part thereof. But that such deed was accepted, and such mortgage executed and delivered by the said B. solely as the attorney or agent of the said M., the mortgagee aforesaid, and to carry into effect the agreement with your orator as aforesaid.

And your orator further shows, that after the execution of the said deed and mortgage aforesaid, to wit, after the said fourth day of May, eighteen hundred and twenty-one, your orator continued for more than four years in the possession of such premises, and in the reception of the rents and profits thereof, and did lease and rent out such premises, or part thereof, and did exercise other acts of ownership in and about the same. And further, that your orator was in the habit, during such period, of paying over such rents to the said B., as agent both of the said M. and of your orator, for the purpose of being remitted to him on account of the debt due by your orator as aforesaid. And further, that such remittances were actually made to the said M.

And your orator further shows unto your honor, that the said J. B., by and with the direction and assent of the said L. M., by indenture bearing date the first day of June, eighteen hundred and twenty-nine, made and executed by and between the said J. B. of the first part, and J. C. and J. R., partners in trade, under the firm or style of C. & R., of the second part, did grant, bargain and sell and convey unto the said J. C. and J. R., for and in consideration of the sum of fifteen thousand dollars, therein expressed, all and singular the aforesaid lot of ground and premises; to have and to hold the same to them, their heirs and assigns for ever, subject however to a certain lease executed by the said J. B., as therein expressed, as by such indenture or record thereof, recorded in the office of the register in and for the city and county of New-York, in liber 254 of Conveyances, page 238, the twenty-second August, eighteen hundred and twenty-nine, will on reference appear.

And your orator further shows unto your honor, that he has been informed and believes, and charges the truth to be, that the said J. B. received the said sum of fifteen thousand dollars, and remitted the same to the said M., or has given him credit therefor, or in some mode accounted with him for the same.

And your orator further sheweth, that on or about the time of the conveyance aforesaid, from the said B. to the said J. C. and J. R., parties as aforesaid, it was further required by the said B., on behalf of the said M., that your

orator should pay up certain arrears of rent due from your orator, arising from his having collected the rents of the premises, or being responsible for the occupation of a part thereof. And thereupon your orator agreed with the said J. C. and J. R., parties as aforesaid, that they should endorse the note of your orator for the amount of such arrears, and should give the same to the said B., and that the premises aforesaid should stand as a security to them as well for such endorsements, as for the said fifteen thousand dollars, so to be advanced by them as aforesaid. And further, in pursuance of such agreement, a note of your orator, for the sum of five hundred and seventy-five dollars, was endorsed by the said C. & R. in their said partnership name and state, and delivered to the said B. for the use of the said M.

And your orator further shows, that the said J. C. and J. R., partners as aforesaid, were, and each of them was fully informed and apprized at and before the time of the execution and delivery of the conveyance aforesaid, and the payment of the said sum of fifteen thousand dollars of the rights, title, and interest of your orator in such premises, and that the said M. had received the conveyance of such premises, and claimed the same as mortgagee only, or for security for a sum of money; and that the said J. B. had taken the deed aforesaid, and acted in the premises only as the agent or attorney of the said M., to preserve his rights as such mortgagee; and further, that the said J. C. and J. R., partners aforesaid, took and became entitled to, under and by virtue of the last recited indenture, executed to them as aforesaid, no other or greater estate or interest in the premises than was taken or held by the said M., or by the said J. B., as his attorney or agent, and that they became thereby subject to all the equities and rights of your orator in the premises, and did expressly contract and agree with your orator, to advance and loan to and for your orator's use, the sum of fifteen thousand dollars, and to endorse the said note, to be paid or delivered to or for the use of the said M.

And your orator further shows, that the said J. C. and J. R., as such partners, and each of them well understanding the rights of your orators, and with a full intention and agreement to take and hold such premises as security only for the said sum of fifteen thousand dollars, paid by them, and the note so endorsed by them as aforesaid, have, and each of them hath, at different times since the date of such deed to them as aforesaid, recognized and admitted your orator's claim, and admitted and avowed that they and each of them held such premises, and claimed an interest and estate therein only as security for the payment of the sum of money aforesaid, and have promised and agreed to retrocede such premises to your orator upon being refunded such amount, without any interest being added thereto, it being expressly agreed that the rents of such premises should be in full satisfaction of such interest, and such note being discharged. And your orator well hoped that the said J. C. and J. R., partners as aforesaid, would have admitted the right of your orator to redeem such premises, and receive a conveyance of the same upon payment of such note for five hundred and seventy-five dollars as aforesaid, and upon payment of the said sum of fifteen thousand dollars, would have allowed your orator to so redeem the same, and would have surrendered such premises to your orator, and executed and delivered to him a good and sufficient deed of conveyance for the same. But

now, so it is, may it please your honor, that the said J. C. and J. R., partners as aforesaid, and each of them; contriving and confederating with divers others to your orator unknown, but who, when discovered, your orator prays may be made parties hereto, with apt words to charge them how to aggrieve your orator in the premises, have wholly refused to comply with the reasonable request of your orator. In consideration whereof, and forasmuch as your orator is remediless in the premises, except in this honorable court—To the end, therefore, that the said J. C. and J. R., and their confederates, when discovered, may true, full, and perfect answer make to the premises, your orator hereby waiving the necessity of such answer being made on the oaths of the said J. C. and J. R., respectively, according to the statute, according to the best and utmost of their several and respective knowledge, information and belief, full, true, and perfect answers make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they thereunto severally, and respectively, and distinctly interrogated; and that the said J. C. and J. R., partners as aforesaid, and each of them, may be compelled by a decree of this court, to surrender the possession of such premises, and to execute and deliver to your orator, or such person as your orator shall designate, good and sufficient conveyance and assignment in the law of all and singular such premises, and their and each of their title, right and interest therein, upon receiving the said sum of fifteen thousand dollars, and upon payment of (or receiving the release of the said C. & R.,) the said note of five hundred and seventy-five dollars, your orator hereby offering to pay such amount, and take up such note; and that your orator may have such other or further relief in the premises as may be equitable; and may transfer and deliver all and every deed, lease, or instrument, whether taken to or held by them, or either of them, relating to or accompanying the conveyance of such lot of land and premises to them as aforesaid, or relating to the said premises; and for that purpose may discover what deeds, leases, or instruments have been executed or assigned to them, or either of them, relating to such premises.

May it please your honor to grant unto your orator the people's writ of subpoena, issuing out of and under the seal of this honorable court, directed to the said J. C. and J. R., thereby commanding them at a certain day, and under a certain penalty, therein to be expressed, to be and appear before your honor, in this honorable court, then and there to answer the premises, and to stand to and abide by such order and decree therein, as to your honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your orator shall ever pray.

J. L. D.

No. 267, Vol. II.—Page 159.

DECREE FOR REDEMPTION.

(Title.)

At, &c., (No. 13.)

This cause coming on to be heard upon the bill of complaint and answer of the defendants C. & R., and deliberation being had thereupon, it is ordered, adjudged, and decreed, that it be referred to one of the masters of this court, to take an account of what is due to the defendants for principal and interest on the bond and mortgage mentioned in the pleadings. And the said master is also to take an account of the rents and profits of such mortgaged premises come to the hands of the said defendants, or of any person or persons for their use, or by their order, or which the said defendants might without wilful default have received. And in case the said master shall find that such defendants have been in the actual occupation of such premises, then he is to set a proper occupation rent for the same, for the time of such possession. And the master is to make such defendants all just allowances, and particularly for all necessary repairs and lasting improvements which have been put upon such premises by them, and to allow interest upon the sums properly expended therefor. And what shall be coming on account of such rents and profits, is to be deducted from what shall be found due for principal and interest as aforesaid. (*Clause for production of books, &c., and examination.*) And it is ordered and decreed, that upon the confirmation of such report, the complainant do pay unto the defendants the amount which shall be certified to be due to them for principal and interest, together with their costs to be taxed, within months after service of a copy of such report and order of confirmation, together with a copy of the bill of costs as taxed, and of this decree, and thereupon that such defendants do re-convey the said premises to the complainant, by a proper deed to be settled by such master, free and clear of all incumbrances made or charged by them, or either of them, or any persons claiming by or under them, or either of them. And do deliver up all deeds and writings in his custody or power, relating to such mortgaged premises. But in default of the said complainant paying to the said defendants the amount so reported due, with interest and costs, within the time aforesaid, it is ordered and decreed, that the said bill of complaint do stand dismissed out of this court, as to the said defendants, with costs to be taxed.

No. 268, Vol. II.—Page 159.(a)

FINAL ORDER FOR DISMISSION ON A REDEMPTION BILL.

(Title.)

At, &c., (No. 13.)

It appearing by an affidavit of C. M., made in this cause, that on the day of last, he served a copy of the decretal order made in this cause, dated the day of last, together with a copy of the master's report therein, and a copy of the taxed bill of costs upon the above named complainant, by delivering the same to him personally; and it also appearing by such affidavit, and also the affidavit of the defendants in this cause, that the payment of the amount reported due by such master, and of such costs, has not been made pursuant to such decretal order:—Thereupon, on reading and filing such affidavits, and on reading such decretal order and report, it is ordered and decreed, that the bill of complaint in this cause do stand dismissed out of this court, with further costs to be taxed; and that the defendants have execution for such further costs, as well as the costs heretofore taxed.

No. 268 A, Vol. II.—Page 163.

BILL FOR PARTITION.

State of New-York.

*In Chancery,**Before the Vice-Chancellor of the First Circuit.**To the Chancellor of the State of New-York:*

Humbly complaining, sheweth unto your honor, your orator, William Post, of the city and state of New-York, merchant—That your orator and Gerardus Post, of said city, and state of New-York, merchant, in the life time of the said Gerardus Post, and at the time of his decease, were seized in fee simple as tenants in common in equal undivided moieties of the several lots, pieces, parcels of ground and real estate, hereinafter particularly mentioned and described. And your orator further sheweth unto your honor, that the said Gerardus Post, deceased, in his life time being seized in manner aforesaid, as tenant in common with your orator, in equal undivided moieties of the several lots, pieces, parcels of ground and real estate, hereinafter particularly mentioned and described, did on or about the twelfth day of October, in the year of our Lord one thousand eight hundred and thirty-three, duly make, execute, and publish his last will and testament in writing, bearing date the same day and year last aforesaid, in the manner and with the solemn-

(a) See No. 268 A, bill for partition, the next precedent.

nities prescribed by law, for devising and passing real estate in fee, which said will is in the words or of the tenor and to the effect following, that is to say:—

“ Know all persons, that I, Gerardus Post, of the city and state of New-York, being of sound disposing mind and memory, and conscious of the uncertainty of life, have made and published, and by these presents do make and publish this, my last will and testament, in manner and form following: that is to say, &c.

As by the said last will and testament, or the record thereof, in the office of the surrogate of the county of New-York, reference thereto being had, may more satisfactorily appear, and to which, or one of which, your orator, for greater certainty in the premises, begs leave to refer.

And he further shows, that the said Gerardus Post, the before named testator, after making, executing and publishing his said last will and testament, in manner and form aforesaid, and on or about the twenty-second day of October, in the year of our Lord one thousand eight hundred and thirty-three, departed this life without altering, cancelling, or revoking his said will, and leaving the same in full force and effect, being, as your orator is informed and verily believes, at the time of his death, as well as at the time of making and publishing his said will, and from thenceforward continually until his death, seized and possessed as tenant in common with your orator, in equal undivided moieties, of the several lots, pieces, parcels of ground and real estate hereinafter particularly mentioned and described, and numbered respectively from firstly to one hundred and twenty-sixthly inclusively, and whereof partition is sought by this bill of complaint, to be made between your orator and the children and devisees of the before named testator, named, intended, or referred to, in and by his said will, as well according to the estate and interest of your orator, therein, as according to the respective estates and interests of the said children and devisees of the said testator, under and by virtue of his said will.

And your orator further shows, that ever since the death of the said testator, Jehiel Jaggar and Edward Taylor, two of the executors and trustees named in the said will, have respectively neglected and refused, and as your orator is informed and believes, still respectively neglect and refuse to take upon themselves the burthen of the execution of the said will, or to interfere or intermeddle in any manner with the execution thereof.

And your orator further shows, that after the death of the said testator, and on or about the eighteenth day of November, in the year of our Lord one thousand eight hundred and thirty-three, Caleb S. Woodhull, being the only other executor and trustee named in the said will, as your orator is informed and believes, caused the said last will and testament of the said Gerardus Post, deceased, to be proved and allowed in due form of law, as and for the last will and testament of the real as well as the personal estate of the said deceased, by and before the surrogate of the county of New-York, to whom the probate thereof of right belonged, and letters testamentary thereon to be to him, the said Celeb S. Woodhull, granted as such executor by the said

surrogate, and that he, the said Caleb S. Woodhull, did assume upon himself alone the burthen of the execution of the said will, and of the trusts therein contained, and that by virtue thereof, he, the said Caleb S. Woodhull, became, and is the sole acting executor of the said will and sole trustee of and for the said children and devisees of the said testator, under and by virtue of his said will upon the trusts, and to and for the several uses, intents, and purposes in the said will expressed and set forth.

And your orator further shows unto your honor, that the said testator, Gerardus Post, at the time of his death left him surviving his widow Susan Post.

And your orator further shows, that on or about the twentieth day of May, in the year of our Lord one thousand eight hundred and thirty-four, the said Susan Post departed this life.

And your orator further shows unto your honor, that the said Gerardus Post, at the time of his death, left him surviving five children, to wit : three sons and two daughters, whose names respectively are as follows, namely : Gerardus Post, William Post, Jehiel Jaggar Post, Susan Post, and Mary Jaggar Post, respectively named by the said testator in his said last will and testament as his children and devisees, and who are the only surviving children, issue, or descendants of him the said testator, Gerardus Post, deceased.

And your orator further shows unto your honor, that your orator and the said Gerardus Post, deceased, the before named testator, at the time of making, executing, and publishing his said last will and testament, and from thence continually forward, until and at the time of his death, were seized as tenant in common, in equal undivided moieties in fee simple, of and in and well entitled to the whole of the following several lots, pieces, parcels of ground, and real estate, all situate, lying, and being within the city of New-York, in the state of New-York, and hereinafter next severally particularly mentioned and described, and numbered respectively from firstly to one hundred and twenty-sixthly, inclusively, and whereof partition in fact is sought to be made, that is to say :—(*Description.*)

And your orator further sheweth unto your honor, that on or about the first day of August, in the year of our Lord one thousand eight hundred and ten, your orator and Catharine Post, his wife, and the said Gerardus Post, since deceased, made and executed unto William Lawrence, of the city of New-York, merchant, since deceased, a certain indenture of mortgage, bearing date the day and year last aforesaid, of and upon the aforesaid lots, numbers four hundred and seventy-eight and four hundred and eighty, in Broadway, and "ninety-seventhly," and "ninety-eighthly," herein before described ; which said indenture of mortgage was given to secure the payment of the sum of three thousand six hundred and fifty dollars, together with the interest which might become due thereon, according to the condition of a certain bond or obligation, bearing even date therewith, made and executed by your orator and the said Gerardus Post, since deceased, to the said William Lawrence ; and which said indenture of mortgage was registered in the office of register in and for the city and county of New-York, on the twenty-fourth day of August, in the year last aforesaid, in liber No. 23 of Mortgages, page 385.

and your orator further sheweth, that the said principal sum of three thousand six hundred and fifty dollars, together with the interest thereon, at the rate of six per cent. per annum, from the day of October, in the year one thousand eight hundred and thirty-five, is still due and unpaid, and that the said indenture of mortgage is now a valid and subsisting lien upon the said above mentioned lots, numbered four hundred and seventy-eight and four hundred and eighty, in Broadway ; and to which said bond or obligation and indenture of mortgage, when produced, or the record thereof, your orator begs leave to refer, for greater certainty and particularity in regard thereto.

And your orator further sheweth unto your honor, that on or about the fourth day of May, in the year of our Lord one thousand eight hundred and twenty-five, your orator and Catharine his wife, and Gerardus Post and Susan his wife, both since deceased, did make and execute unto Girard Beekman, since deceased, of said city, a certain indenture of mortgage, bearing date the day and year last aforesaid, of and upon the aforesaid lots, numbers five hundred and fifty-five, in Broadway, and number one hundred and three, in Mercer-street, and "fifty-seventhly" and "fifty-eighthly," hereinbefore described ; which said last mentioned indenture of mortgage was given to secure the payment of the sum of six thousand seven hundred and fifty dollars, together with the interest which might grow due thereon, according to the condition of a certain bond or obligation, bearing even date therewith, made and executed by your orator and the said Gerardus Post, since deceased, to the said Girard Beekman, since deceased, and which said last mentioned indenture of mortgage was, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and twenty-five, recorded in the office of register in and for the city and county of New-York, in liber No. 80, of Mortgages, pages 123. And your orator further sheweth, that on or about the thirtieth day of November, in the year of our Lord one thousand eight hundred and twenty-six, the said last mentioned indenture of mortgage was assigned, in writing, to Eli White, of said city, and that the said assignment was, on the said thirtieth day of November, in the year last aforesaid, recorded in the office of register in and for the city and county of New-York, in liber 95, of Mortgages, page 535. And your orator further sheweth, that the said principal sum of six thousand seven hundred and fifty dollars, together with the interest, at the rate of six per cent. per annum, which has accrued thereon since the first day of November, in the year of our Lord one thousand eight hundred and thirty-five, is still due and unpaid ; and that the said last mentioned indenture of mortgage is now a valid and subsisting lien upon the said lots, numbers five hundred and fifty-five, in Broadway, and one hundred and three, in Mercer-street ; and to which said last mentioned bond or obligation and indenture of mortgage, and the said assignment of the same, when produced, or the record therefor, your orator begs leave to refer, for greater certainty and particularity in regard thereto.

And your orator further sheweth unto your honor, that on or about the seventh day of October, in the year of our Lord one thousand eight hundred and thirty-three, your orator and the said Gerardus Post, since deceased, made and executed unto Samuel Knower and Reuben Winslow, of the city

of New-York, a certain indenture of lease of and upon the above mentioned lot one hundred and sixty-one in Water-street, in the second ward of said city, and "thirdly" herein above described, to commence the seventh day of October, in the year of our Lord one thousand eight hundred and thirty-three, and to continue for the term of three years, six months and twenty-four days, thence next ensuing, for the yearly rent or sum of twelve hundred dollars, in equal quarter-yearly payments. That in and by the said lease it is among other things provided and agreed by and between the respective parties thereto, that the said parties of the second part thereto, their heirs executors, administrators, or assigns, shall and will, at their own proper costs and charges, bear, pay, and discharge all such taxes as shall or may, during the said term thereby granted, be charged assessed or imposed upon the premises demised in and by the said lease. And your orator further saith, that the said term of three years, six months, and twenty-four days, mentioned and set forth in the said lease, is not yet ended and completed; and that the said lease is now a valid and subsisting lease upon the said above mentioned lot number one hundred and sixty-one in Water-street, and to which said lease your orator begs leave to refer himself, for greater certainty and particularity in regard thereto.

And your orator further sheweth unto your honor, that on or about the third day of June, one thousand eight hundred and thirty-three, your orator and the said Gerardus Post, since deceased, made and executed unto Robert C. Smith, of the city of New-York, a certain lease (or agreement) in writing, bearing date the same day and year last aforesaid, of and upon the above mentioned lot number one hundred and sixty-three, in Water-street, in the second ward of said city, and "fourthly" herein above described, for five years, to commence the first day of May, one thousand eight hundred and thirty-four, at the yearly rent of six hundred dollars, to be paid quarterly. That in and by the said lease it is among other things provided and agreed by and between the respective parties thereto, that the said parties of the first part are to do the following for the parties of the second part, viz.—to put and make complete a granite front to said premises, No. 163 Water-street; to fix and complete the stoop in front; to make the wall and finish it; and put the premises in good repair; to pay the taxes and assessments:—and they further agree that the said party of the second part, (after the said alterations and repairs being done) is to keep the said premises No. 163 Water-street as aforesaid, in good repair during the continuance of the said term, damage by fire excepted; and in case the said premises should be partially damaged by fire, the said party of the second part is to have his choice either to surrender the lease or retain it, but if he should choose to retain the lease, then the said party of the first part is to repair such partial damage without delay, and the said lease remain in full effect as aforesaid. And your orator further saith, that the said term of five years is not yet ended and completed, and that the said lease or agreement is now a subsisting and valid lease or agreement of and concerning the aforesaid lot number one hundred and sixty-three in Water-street, and to which your orator begs leave to refer, for greater certainty and particularity in regard thereto.

And your orator further sheweth unto your honor, that the several lots, pieces, or parcels of ground, herein above described, and numbered respec-

tively from "seventy-fourthly" to "seventy ninthly" inclusive, are subject to the claim and right of dower therein, of Margaret Brown, as the widow of Burnell Brown, late of the city and state of New-York, now deceased.

And your orator further shows unto your honor, that your orator is seized in fee simple as a tenant in common of and in the one equal undivided half part, or moiety of all and singular, the several lots, pieces, parcels of ground, and real estate, with the hereditaments and appurtenances herein before particularly mentioned and described, and numbered respectively from firstly to one hundred and twenty-sixthly, inclusively.

And your orator further shows, that under and by virtue of the said last will and testament of the said Gerardus Post, deceased, Gerardus Post, one of the children and heirs of the said Gerardus Post, deceased, is seised in his own right in fee simple as a tenant in common of and in one equal undivided tenth part (the whole into ten equal parts to be divided,) of all and singular the said several lots, pieces, parcels of ground, and real estate, with the hereditaments and appurtenances, subject, however, to the limitations and restrictions in that behalf expressed and declared in and by the said will.

And your orator further shows, that under and by virtue of the said will, William Post, also one of the children and heirs of the said Gerardus Post, deceased, is in like manner seized in his own right in fee simple, as a tenant in common of and in one other equal undivided tenth part of all and singular the said several lots, pieces, parcels of ground, and real estate, with the hereditaments and appurtenances, subject, however, to the limitations and restrictions in that behalf expressed and declared in and by the said will.

And your orator further shows, that under and by virtue of the said will, Jehiel Jaggar Post, also one of the children and heirs of the said Gerardus Post, deceased, is in like manner seized in his own right in fee simple, as a tenant in common of and in one other equal undivided tenth part of all and singular, the said several lots, pieces, parcels of ground, and real estate, with the hereditaments and appurtenances, subject, however, to the limitations and restrictions in that behalf expressed and declared in and by the said will.

And your orator further shows, that under and by virtue of the said will, Susan Post, also one of the children and heirs of the said Gerardus Post, deceased, is entitled to have and enjoy during her natural life, the interest or income of and in one other equal undivided tenth part of all and singular the said several lots, pieces, parcels of ground, and real estate, with the hereditaments and appurtenances, subject, however, to the limitations and restrictions in that behalf expressed and declared in and by the said will. And your orator further shows, that under and by virtue of the said will, the said last mentioned one undivided tenth part, or share of the said Susan Post, of, in, and to the said premises, will, at the death of the said Susan Post, if she shall die leaving lawful issue, descend and go to such lawful issue in fee simple, and to their heirs and assigns for ever. But in case the said Susan Post shall die, leaving no lawful issue, that then and in that case, the said last mentioned one undivided tenth part, or share, of the said Susan Post, of, in, and to the said premises, will at the death of the said Susan Post, go and belong, as your orator is advised and believes, to the heirs at law in fee simple, of the before named testator, the said Gerardus Post, deceased, who may survive

the said Susan Post, in like manner as if the said testator, the said Gerardus Post, deceased, had died intestate.

And your orator further shows, that under and by virtue of the said will Mary Jaggar Post, also one of the children and heirs of the said Gerardus Post, deceased, is entitled to have and enjoy, during her natural life, the interest or income, of and in the remaining one other equal undivided tenth part of all and singular the said several lots, pieces, parcels of ground, and real estate, with the hereditaments and appurtenances, subject, however, to the limitations and restrictions in that behalf expressed and declared in and by the said will. And your orator further shows, that under and by virtue of the said will, the said last mentioned one undivided tenth part, or share of the said Mary Jaggar Post, of, in and to the said premises, will, at the death of the said Mary Jaggar Post, if she shall die leaving lawful issue, descend and go to such lawful issue in fee simple, and to their heirs and assigns for ever. But in case the said Mary Jaggar Post shall die, leaving no lawful issue, that then and in that case, the said last mentioned one undivided tenth part, or share of the said Mary Jaggar Post, of, in and to the said premises, will, at the death of the said Mary Jaggar Post, go and belong as your orator is advised and believes, to the heirs at law in fee simple, of the before named testator, the said Gerardus Post, deceased, who may survive the said Mary Jaggar Post, in like manner as if the said testator, the said Gerardus Post, deceased, had died intestate.

And your orator further shows unto your honor, that the said Caleb S. Woodhull, by virtue of his appointment, as one of the executors of the said will of the said Gerardus Post, deceased, he having alone qualified as such, is alone the trustee, in reference to the equal undivided five-tenth parts, or moiety of all and singular the said several lots, pieces, parcels of ground, and real estate, with the hereditaments and appurtenances, in trust to and for the use and benefit of the said Gerardus Post, William Post, Jehiel Jaggar Post, Susan Post, and Mary Jaggar Post, children and heirs of the said Gerardus Post, deceased, pursuant to the trusts, and for the purposes in that behalf declared and contained in the said will.

And your orator further shows, that the said Gerardus Post, one of the children of the said Gerardus Post, deceased, was, as your orator is informed and believes, aged twenty-one years, on or about the eleventh day of May, in the year of our Lord one thousand eight hundred and thirty-five. And your orator further shows, that the said William Post and Jehiel Jaggar Post, two other children of the said Gerardus Post, deceased, are respectively infants under the age of twenty-one years;—that is to say: William Post, one of the children of the said Gerardus Post, deceased, was, as your orator is informed and believes, aged nineteen years, on or about the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and thirty-five; and Jehiel Jaggar Post was, as your orator is informed and believes, aged sixteen years on or about the eighth day of July, in the year of our Lord one thousand eight hundred and thirty-five. And your orator further shows, that the said Susan Post and Mary Jaggar Post, the remaining other children of the said Gerardus Post, deceased, are also respectively infants, under the age of twenty-one years;—that is to say: Susan Post was, as your orator is informed

and believes, aged fourteen years, on or about the twenty-seventh day of August, in the year of our Lord one thousand eight hundred and thirty-five; and Mary Jaggar Post was, as your orator is informed and believes, aged eight years, on or about the twenty-ninth day of December, in the year last aforesaid.

And your orator further shows, as he is informed and believes, that all and singular the said several lots, pieces, parcels of ground, and real estate, herein before particularly mentioned and described, and the several undivided shares and interests thereof and therein, now are free, clear, and discharged of and from all or any judgments, mortgages, incumbrances, and other liens, except as herein before particularly mentioned and set forth; and also except it may be, in some instances, for current taxes and assessments not yet called for or payable, and subsisting leases on certain parts thereof yielding a fair and reasonable rent.

And your orator further shows, that all and singular the said premises herein before particularly mentioned and described, are, in the opinion and belief of your orator, so situated and circumstanced, that a partition and division thereof, in fact, can be made, upon fair and equitable principles, to and among the said several owners and proprietors thereof, and those beneficially interested therein, according to the rights and interests of the different persons interested therein, and according to the estates, uses, and trusts in the said will, and herein before respectively stated and set forth, without resorting to a sale thereof, and dividing and distributing the proceeds thereof; at least, by making, in a few instances, when it may be necessary or requisite so to do, some small pecuniary compensation for the equality of such partition or division, which pecuniary compensation can readily be made out of the proceeds of the sales of some parts of the said premises, should a sale thereof be found necessary for that purpose, or otherwise, and should the same be ordered and directed.

And your orator further shows, that he is desirous that partition should be made of all and singular the aforesaid several lots, pieces, parcels of ground, and real estate, herein before particularly mentioned and described, by and between him and the said Gerardus Post, William Post, Jehiel Jaggar Post, Susan Post, and Mary Jaggar Post, children of the said Gerardus Post, deceased, according to their several shares, estates, uses, and trusts therein, as expressed or created in and by the said last will and testament of the before named testator, and as herein before set forth and averred.

And your orator well hoped that a partition and division of the said several premises herein before particularly mentioned, by and between the before named tenants in common thereof, and the several persons interested therein, according to their respective estates, shares, uses, and trusts therein, might have been voluntarily made by and between him and the said Gerardus Post, William Post, Jehiel Jaggar Post, Susan Post, and Mary Jaggar Post, children of the said Gerardus Post, deceased, respectively, without resorting to this honorable court for aid and relief therein, but inasmuch as your orator prefers a division or partition in fact, so far as such division or partition may be practicable, consistently with the rights of all parties interested therein, rather than a sale of the said premises, which sale your orator could make in

his own behalf only as to one equal undivided half or moiety thereof, and the said Caleb S. Woodhull, in behalf of the said children of the said Gerardus Post, deceased, as the qualified executor under the said will is thereby only authorised to make, as to the other undivided half or moiety thereof; and inasmuch also as the said William Post, Jehiel Jaggar Post, Susan Post, and Mary Jaggar Post, on account of their respective minorities, are severally incompetent to make a voluntary valid partition and division of the said premises, so far as they are severally interested therein, your orator is advised, and believes, that a valid and effectual partition or division of the said premises cannot be made except by the aid and interposition of this honorable court, where alone matters of this nature are properly cognizable and relievable; to the end, therefore, that the said Caleb S. Woodhull, qualified executor and trustee as aforesaid, Gerardus Post, William Post, Jehiel Jaggar Post, Susan Post, and Mary Jaggar Post, children of the said Gerardus Post, deceased, their confederates when discovered may, upon their respective corporal oaths, true, full and perfect answer make, to all and singular the premises according to their respective knowledge, information, and belief. And that a guardian *ad litem* may be appointed or assigned for the said William Post, Jehiel Jaggar Post, Susan Post, and Mary Jaggar Post, respectively, in consideration of their said respective minorities, through whom they may severally appear to and put in their answers to this bill of complaint, and who may defend and protect on their behalf, their several rights and interests in the said premises. And that a partition or division, so far as the same may be practicable consistently with the just and equitable rights of all the said parties beneficially interested therein, may be made of all and singular the aforesaid lots, pieces, and parcels of ground, and real estate herein before particularly mentioned and described, to and among the several tenants in common thereof, and the several persons beneficially interested therein, may be made of all and singular the aforesaid lots, pieces, and parcels of ground and real estate herein before particularly mentioned and described, to and among the several tenants in common thereof, and the several persons beneficially interested therein, herein before particularly and respectively named according to their several and respective shares, rights, estates, uses, and trusts therein, both with respect to your orator and to the children and heirs of the said Gerardus Post, the before named testator, deceased, as devised, created, limited, and declared in and by his said last will and testament. And that if such partition or division in fact should be found and ascertained to be impracticable in regard to any part or parts of the said premises, then, that such part or parts should be sold, and the proceeds thereof divided to and among the several parties entitled thereto, according to their respective rights thereto. And that the respective shares, rights, estates, uses, and trusts of the before named tenants in common, and the several persons beneficially interested, of and in the said premises, may be judicially declared, ascertained, and established by the order and decree of this honorable court, in that behalf to be pronounced, and that thereupon three reputable freeholders may be appointed by this court, pursuant to the statute in such case made and provided, to make the said partition or division to and among the said several tenants in common thereof, and the several persons beneficially interested therein, agree-

ably to such shares, rights, estates, uses, and trusts, as the same shall have been so declared, ascertained, and established, and that all such other and further proceeding may be had as agreeably to law, and the course and practice of this court, may be requisite and proper to render such partition and sale valid and effectual, and to enable the before named several parties to have and to hold in severalty their aforesaid respective shares, rights, estates, uses, and trusts therein, so far as a partition in fact may be made. And that your orator may have such other further relief in the premises as to your honor may seem meet and proper, together with his reasonable costs and charges in this behalf sustained.

May it please your honor, the premises having been duly considered, to grant unto your orator the most gracious writ of subpœna of the people of the state of New-York, issuing out of and under the seal of this honorable court, and to be directed to the said Caleb S. Woodhull, qualified executor and trustee as aforesaid, Gerardus Post, William Post, Jehiel Jaggar Post, Susan Post, Mary Jaggar Post, and their confederates, when discovered, therein and thereby commanding such and every of them, under a certain penalty, and by a short day, therein to be inserted, personally to be and appear in this honorable court, before the vice-chancellor of the first circuit, wheresoever the said court shall then be, then and there to answer all and singular the premises, and to stand to, perform, and abide by such orders and decree therein as to your honor shall seem meet and proper, and your orator, as in duty bound, shall ever pray, &c.

(Signed)

WILLIAM POST.

(Signed) JAS. J. M. VALENTINE, *Solicitor.*

GEO. W. STRONG, *of Counsel of Complainant.* (Usual Jurat).

ANOTHER BILL FOR PARTITION.

In Chancery.

*To the Honorable REUBEN H. WALWORTH, Chancellor
of the State of New-York.*

Humbly complaining, show unto your honors, your orators, M. H., L. M. H., M. H., C. B. G. and S. his wife, and E. H., all of the city of New-York, A. R. L. and A. M. his wife, of the town of Catskill, and county of Greene, M. H., M. H., M. C. H., Cecilia H., H. H., C. C. H., J. F. H., and Mary F. Hoffman, all of Stratford, in the state of Connecticut, which said M. L. M., M., S., E., A. M., Mary, Matilda, Maria, C., Harriet, C. C., and J. F., are children and heirs at law of Martin Hoffman, deceased, and which said Edward, Matilda, Maria, Cecilia, Harriet, C. C., and J. F., are infants under the age of twenty-one years, and sue by the said Murray Hoffman, their next friend; and which said Mary Frances is the widow of the said Martin Hoffman, deceased.

That S. O., formerly of Newark, in the state of New-Jersey, and Euphemis his wife, both now deceased, by indenture bearing date the 6th day of November, 1795, made and executed by and between the said S. O. and E. his wife, of the first part, and A. O., of the said town of Newark, and Martin

Hoffman, of the city of New-York, merchant, of the second part, for the good and valuable considerations therein expressed, did grant, bargain and sell, alien and convey unto the said parties of the second part, their heirs and assigns for ever: All, &c.

As by such indenture, which your orators charge to be in the possession or under the control of the said defendants, some or one of them, and pray may be produced as this honorable court shall direct, or by the record thereof, recorded in the office of clerk of the county of Herkimer, in liber E. of Deeds, pages 192 and 193, will on reference appear.

And your orators further show unto your honor, that the said A. O., being under and by virtue of such indenture seized of and well entitled to an estate in fee, in and to the one equal undivided moiety or half part of the land and premises contained in such indenture, and hereinbefore described or intended so to be, departed this life some time in the year 1798, leaving D. A. O., T. L. O., C. L. O., A. O., I. O., Gouverneur O., Catharine H., the wife of A. H., G. G. O., afterwards and now the wife of J. W., S. F. L. O., F. S. O., afterwards the wife of N. L., M. E. O., afterwards the wife of D. B. O., and W. O., his children and heirs at law, him surviving. And further that the said William afterwards departed this life without issue, and intestate.

And your orators further show unto your honor, that the said D. A. O. and R. C. his wife, A. H. and C. his wife, C. L. O. and Elizabeth his wife, T. L. O. and M. his wife, A. O. and Mary L. his wife, J. W. and G. G. his wife, G. O. and C. his wife, D. B. O. and M. E. his wife, F. S. O., S. F. L. O., and I. O. in and by a certain indenture bearing date the 16th day of May, 1810, did, for and in consideration of the sum of \$3920, therein expressed, grant, bargain, and sell unto Martin Hoffman, the party thereto of the second part, his heirs and assigns, all and singular the moiety or equal undivided half part of the said tract of land hereinbefore mentioned, as the same is hereinbefore bounded and described, as by such indenture, or the record thereof duly recorded in the office of clerk of the county of St. Lawrence, in Book No. 3 of Deeds, page 539, &c., will on reference appear.

And your orators further show unto your honor, that the said Martin Hoffman, the party of the second part in the conveyance herein next before recited, in and by a certain indenture, bearing date the 2d day of September, 1811, made and executed between the said M. H. and Mary his wife, of the first part, and the said G. O., S. F. L. O., and F. S. O., afterwards wife of N. L., parties of the second part, after reciting the indenture herein next before-mentioned and set forth as executed to him the said Martin Hoffman, and also reciting that the consideration expressed in the said indenture was paid by the said parties of the second part, and the premises thereby conveyed, were so conveyed to the said Martin Hoffman, in trust, for the use and benefit of the said parties of the second part, and had been and still were held by him on such trust, except as to a part of the said tract on the southerly end thereof, containing 2040 acres, which had been granted to P. K., by said Martin Hoffman, for the common benefit of himself, and the said parties of the second part, who had severally received their respective proportions

of the consideration money of such sale, did, with the said Mary his wife, grant, bargain and sell, release and convey unto the said parties of the second part, their heirs and assigns, all the moiety or undivided half part of the said tract of land herein before mentioned and described, excepting the part thereof as before mentioned sold and conveyed to the said P. K. as such, by such indenture, or the record thereof recorded in the office of clerk of the county of St. Lawrence, in Book No. 3 of Deeds, page 229, &c., will on reference appear.

And your orators further show unto your honor, that they are informed and believe, and therefore allege, that the said Sarah F. L. O., hath by some indenture or legal instrument of conveyance, sold and conveyed all her undivided part of such lands and premises, and all her share, right, title and estate therein and thereto, unto the said Isaac O., or hath entered into some contract or agreement with the said Isaac, for such sale and conveyance to him. But your orators being ignorant of the particulars respecting the same, pray that the said S. F. L. O., and Isaac O., or one of them, may fully and particularly answer as to the same, and produce such indenture or instrument of conveyance, or agreement, if any such there be.

And your orators further show unto your honor, that the said M. H., named in the indenture herein first recited, being, under and by virtue of the same, seised of and well entitled to an estate in fee, in and to the one equal undivided moiety or half part of the lands and premises contained therein, and conveyed thereby or intended so to be, in and by a certain indenture bearing date the second day of September, in the year one thousand eight hundred and eleven, made and executed by and between the said M. H., and Mary F. his wife, of the first part, and C. D. C., and T. L. O., of the second part, for the good and valuable considerations therein mentioned, did grant, bargain and sell, alien and convey unto the said parties of the second part, their heirs and assigns, divers lots, tracts of land, and premises in the said indenture, particularly set forth and described (whereof the lands and premises herein before mentioned composed part,) upon certain trusts and for certain purposes therein expressed; and among other trusts, to sell and dispose of the same at public or private sale as therein directed, as by such indenture will on reference appear.

And your orators further show unto your honor, that R. L., J. W., and W. O., of the city of New-York, merchants, at and after the date of the said last recited indenture, claimed to be entitled to certain liens upon and interests in several of the lots, tracts, or parcels of land contained in such last mentioned indenture, under and by a virtue of a certain indenture, dated the seventh day of January, eighteen hundred and eight, made and executed between the said M. H. and wife, of the first part, and the said R. L., J. W., and W. O., of the second part; and further, that C. W., of the city of New-York, did also in like manner claim to be entitled to certain liens and interests in some of the said lots of land and premises under and by a virtue of a certain indenture, dated the 26th day of August, 1841, and executed between the said M. H. and wife, of the first part, and the said C. W., of the second part.

And your orators further show unto your honor, that in and by a certain

indenture, bearing date the 30th of January, 1812, made and executed by and between the said C. D. C. and T. L. O., parties of the first part, the said R. L., J. W., W. O. and C. W., parties of the second part, and Martin Hoffman and Alexander S. Glass, merchants, of the third part, the said parties of the first and second part thereto, for the several good and valuable considerations respectively therein expressed, did grant, bargain and sell, release and convey unto the said parties of the third part, their heirs and assigns, all and singular the undivided moiety or half part of the tract or parcel of land and premises herein first mentioned, as the same are herein set forth, bounded and described.—Excepting, however, thereout, such proportion, or part thereof, theretofore sold and conveyed by the said Martin Hoffman and wife, to P. K., being about one thousand and twenty acres out of the moiety thereby conveyed, as by the said conveyance in your orator's possession, and ready to be produced as this honorable court shall direct, or by the record thereof duly recorded in the office of clerk of the county of St. Lawrence, in liber No. 3 of Conveyances, pages 536, &c., will on reference appear.

And your orators further show unto your honor, that the said lands and premises which at the date of the conveyance herein first recited were situated in the county of Herkimer, fell, upon the erection of the county of St. Lawrence, within such last mentioned county.

And your orators further show unto your honor, that the said Martin Hoffman, departed this life on or about the twenty-ninth day of January, in the year one thousand eight hundred and twenty-eight, intestate, and leaving the said M. H., L. M. H., M. H., E. H., S. G., A. M. L., M. H., Matilda H., M. C. H., C. H., Harriet H., C. C., and J. F., his children and heirs at law now surviving.

And your orators further show unto your honor, that the said Alexander S. Glass, being seised of the one equal undivided fourth part of the said tract of land and premises, except as before mentioned, did, in and by his last will and testament, duly and in due form of law executed to pass real estate, and dated the 14th day of July, 1826, give and devise in substance unto his sisters, C. G., A. S. G., E. B. G., and to his brother, H. McL., their heirs and assigns for ever, (to be equally divided between them, share and share alike,) all the rest and residue of his real estate, lands, tenements, and hereditaments wheresoever situated, or in which he was in any manner interested, as by such last will and testament which your orators aver to be in the possession of the defendants hereafter named, or some or one of them, and which they pray may be produced as this honorable court shall direct, will on reference appear.

And your orators further show unto your honor, that the share of the said lands and premises, and the undivided right and title therein and thereto of the said A. S. G., did pass to and become vested in the said C. G., Ann S. G., Eliza B. G. and H. McL., by virtue of the residuary clause in the said last will and testament of the said Alexander S. Glass, herein before in substance and in part recited.

And your orators further show unto your honor, that the said Martin Hoffman and the said Alexander S. Glass, in their life-time, and the said S. F.

L. O., or the said I. O., or both of them, did appoint G. O., of the town of Waddington, in the county of St. Lawrence, their lawful attorney to effect the sale of and convey the said land and premises; and that the said G. O., as such attorney, has sold and conveyed several parcels of the same, and has entered into contracts or covenants for the sale and legal conveyance of other parcels of land to the purchasers respectively thereof; and that a part of such tract still remains unsold. And further, that the contracts and covenants so entered into by the said G. O., as such attorney, and not heretofore carried into effect, are set forth in schedule A, hereto annexed, and to which your orators refer.

And your orators further show unto your honor, that your orators herein before named, the children of the said Martin Hoffman, deceased, are, and claim to be, together seised of and entitled to the one equal undivided fourth part of all and singular the said tract of land and premises herein before described, (excepting the parcel herein before mentioned as conveyed to said P. K.,) and if the monies and contracts, or securities arising from such part of the said premises as had been sold or contracted to be sold; that is to say, each of such children respectively, to the one equal undivided thirteenth part of the said fourth part; subject, nevertheless, to the right of dower therein of the complainant, M. F. H., widow of the said Martin. And further, that the said Mary Frances is and claims to be entitled to the right of dower in and to such equal undivided fourth part, except as aforesaid.

That the said C. G., A. S. G., Eliza B. G., and Hugh McL. are and claim to be seised of or entitled to one equal undivided fourth part of such tract of land and premises except as aforesaid, and of the monies, contracts and securities aforesaid; that is to say, each to the equal undivided fourth part of such fourth part.

That the said F. S. L. has departed this life, leaving S. F. Lawrence, Mary L., P. H. Lawrence, and N. T. L., her children and heirs at law, her surviving, and that the said N. Lawrence, the husband of said F. S., has also departed this life.

And that the said S. F., Mary, P. H., and N. T., are infants under the age of twenty-one years, and are and claim to be seised of or entitled to the one equal undivided one-sixth part of such lands and premises except as aforesaid, and of such monies, contracts, and securities as aforesaid; that is to say, each to the one equal undivided fourth part of such sixth part.

That the said G. O. is and claims to be seised of or entitled to the one equal undivided sixth part of such lands and premises, except as aforesaid, and of such monies, contracts and securities.

And that the said S. F. L. O., or the said I. O., is seised of or entitled to the one equal undivided sixth part of such lands and premises, except as aforesaid, and of such monies, contracts and securities.

And your orators further show unto your honor, that they are desirous that a partition and division should be made of the said several parcels of land and premises, monies, contracts and securities, among the several parties seised of or entitled thereto, according to their respective estates and interests therein; or, in case such parcels of land as remain unsold, cannot be divided among the owners thereof, without prejudice to them, then, that

the same may be sold, and the proceeds thereof divided among such parties, according to their respective rights and interests. But your orators are advised, that no valid and effectual partition, or division, or sale thereof, can be effected, without the aid and interposition of some court of competent jurisdiction, wherefore your orators have been advised to apply to this honorable court, for aid and direction in the premises.

In consideration whereof, and to the end that the said C. G., Ann S. G., Eliza B. G., and H. McL., S. F. L., Mary L., P. H. L., and N. T. L., G. O., S. F. L. O., and I. O., may, on their several corporate oaths, full, true and perfect answer make, to all and singular the premises, to the best of their and each of their knowledge, information and belief, together with all circumstances relating thereto, and that as fully and particularly as if the same were here again repeated, and they thereunto particularly interrogated. And in particular, that the said G. O., may set forth and discover whether the said paper or schedule hereto annexed, marked A, does not contain a statement of certain contracts and covenants entered into by him as attorney as herein before stated, for the sale of parcels of such premises, and whether such schedule contains a full and true account of the whole of such contracts not executed and completed, and of the monies due upon the same, and the amounts heretofore received thereon; and if not, what are the other such contracts, not set forth therein, with all particulars respecting them. And may also set forth what power of attorney was given to him, and the date, contents, parties to, or a copy of the same. And may render and set forth a full and true account of his sales, conveyances, contracts, receipts, payments, and doings, as such attorney. And may produce as this honorable court shall direct for inspection all contracts for the purchase of any parcel of such premises now in his possession or under his control. And that partition and division may be made according to the course of this court, of the said parcels of land and premises, and of the said contracts and securities, and the monies which shall be due thereupon. And in case it should appear that a partition of the parcel of such premises now remaining unsold, cannot be made without prejudice to the owners thereof, then that such parcel may be decreed by this honorable court, to be sold, and the proceeds thereof divided among the parties interested therein, according to their respective rights and interests, and that your orators may have such other and further relief in the premises, as the nature of the case may require, and as shall be agreeable to equity.

May it please your honor to grant unto your orators the people's writ of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said C. G., Ann S. G., Eliza B. G., H. McL., G. O., S. F. L. O., I. O., S. F. L., Mary L., P. H. L., and N. T. L., commanding them and each of them to be and appear before your honor in this honorable court, at some certain day, and under some certain penalty therein to be named, then and there to answer the premises, and to stand to and perform such orders or decrees as shall be made in the premises.

And your orators, &c.

(Usual Jurat.)

No. 269, Vol. II.—Page 172.

AFFIDAVIT, ABSENT DEFENDANT, &c., ORDER.

(Title.)

State of New-York, } ss.
 County of New-York, }

C. M., of the city of New-York, one of the above named complainants, being duly sworn, saith, that the bill in this cause is filed for the partition of certain premises, and that the defendant J. D. is now absent from the state of New-York, viz. as this deponent verily believes, in the state of Maine, he having left this city about twelve months past, with the intention of residing in such state, and this deponent having heard that he has fixed his residence therein. [*If the absentee is an infant, state that fact.*] And further this deponent, &c.

AFFIDAVIT, PARTY UNKNOWN.

— being sworn, saith that the bill in this cause is filed for a partition of certain premises, situate in the city of New-York, that as is therein stated J. R., now deceased, was entitled to the one equal seventh part of the premises therein described. That the said J. R. died, as this deponent has been informed and verily believes, in the state of South Carolina, but in what part of such state, this deponent has been unable to ascertain, although he has made diligent inquiry for that purpose. That this deponent is wholly uninformed whether the said J. R. left any last will or testament, or made any disposition of his right and share in and to the premises aforesaid; neither does this deponent know nor has he any information who are the heirs at law of the said J. R.

ORDER TO APPEAR AND ANSWER.

(Title.)

At, &c., (No. 13.)

It satisfactorily appearing to this court, by the affidavit of R. B., now filed, that the defendant J. D. is an absent defendant, and resides in the state of Maine, and the bill is filed to obtain a partition of certain premises; thereupon, on motion of Mr. S., solicitor for the complainant, it is ordered, that the defendant, J. D., appear and answer the bill in this cause, by the day of next, (a) or that such bill be taken as confessed by him. And a copy of this order is to be published for three months, once in each week successively, in the state paper, and in the New-York Courier and Enquirer, a paper printed in the county of New-York, in which such premises are situated, which premises whereof partition is sought are briefly described as follows, to wit: A house and lot in the third ward of such city, known as No. 1 Water-street; another house and lot known as No. —.

(a) *The day must be fixed in the order. Care should be taken to make the time long enough for the advertisement.*

No. 270, Vol. II.—Page 173.

(Title.)

At, &c.

Upon filing two several affidavits, showing the due publication of an order made in this cause on the day of last past, requiring the defendant, J. D., to appear and answer the bill in this cause, by the day of last, in the state paper, and in the New-York Courier and Enquirer, which order has been published in such papers respectively for three months, once in each week successively; and on filing the affidavit of R. B., solicitor for the complainant, showing that such defendant hath not appeared to or answered such bill of complaint; thereupon, on motion of Mr. R., solicitor of the complainant, it is ordered, that the said bill be taken as confessed by the said defendant, J. D.

No. 271, Vol. II.—Page 174.

PETITION FOR A GUARDIAN AD LITEM.

*In Chancery.**Before the Chancellor.*

W. R.

v.

Wm. R. R., Jane R., R. R., M. R.,
F. R., infants, under the age of 21
years, impleaded with others.

The petition of William R. R., J. R., and R. R., infants over the age of 14 years, and of M. R. and F. R., infants, under the age of 14 years, by W. O. R., their uncle, respectfully sheweth:

That the said W. R. R., J. R., and R. R., are infants under the age of 21 years and over the age of 14 years. That the said M. and F. are infants under the age of 14 years. That such infants reside in the city of New-York. That a bill has been lately filed in this court, before your honor, by the above named complainant, to procure the partition or sale of certain lands and premises, in which as it is alleged such infants have some estate or interest. That your petitioners are informed that the value of the interest and estate of such infants in such premises is variously estimated from the sum of 5,000 to the sum of \$10,000, consisting of six forty-second parts of about 300 acres of land, in the county of Tompkins and in the county of Seneca.

Your petitioners further show, that a subpoena has been issued against such infants, requiring them to appear and answer such bill, which subpoena was returnable on the 15th day of November last past.

Your petitioners therefore pray, that M. H., a solicitor of this court, may be appointed the guardian ad litem of such infants, to appear and defend such suit.

And your petitioners, &c.

State of New-York,
City and County of New-York, } ss. (Usual Jurat.)

I, M. H., one of the solicitors of this court, residing and practising in the city of New-York, do consent to become guardian ad litem of the above named infant, in the above entitled suit.

City and County of New-York, sa.

M. H., of the city of New-York, counsellor at law, being duly sworn, saith, that he has no interest in this suit, adverse to that of the infants named in the foregoing petition, and it is not connected in business with the solicitor or counsel of the complainant.

Sworn, &c.

State of New-York,
City and County of New-York, } ss.

—, of the city of New-York, sworn, saith that he saw W. C. R., a petitioner in the foregoing petition, to him personally known, subscribe the said petition, and that he also saw M. H., to him personally known, subscribe the consent above written.

Sworn, &c.

No. 272, Vol. II.—Page 174. n. (1)

ORDER APPOINTING GUARDIAN.

(Title.)

At, &c.

On reading and filing the petition of A. S., general guardian of the defendant, F. C., who is an infant, and on motion of Mr. G. M. C., solicitor for the complainants, it is ordered that A. S. be, and he is hereby appointed guardian ad litem for said F. C., to appear for him and defend this suit in his behalf. And it is further ordered, that the security to be given by said guardian for the faithful discharge of his trust be in a bond to the people of this state, with one sufficient surety, to be approved of by one of the master's of this court, in double the amount of the said infant's interest in the premises sought to be partitioned in this cause, or his own bond and mortgage, on unincumbered real estate, according to the rules of this court.

No. 273, Vol. II.—Page 174.

ORDER APPOINTING A GUARDIAN AD LITEM.

J. G. A., &c. }
 v.
 W. A. &c. }

At, &c.

On reading and filing the petition of the above named defendants, S. F. A. and J. A., infants of the age of fourteen years, and the petition of P. A. G., the mother and general guardian of the defendants, J. G. G., E. A. G., J. M. G., E. M. G., and S. A. G., infants under the age of fourteen years, with the affidavits and consent of M. H. thereon endorsed, and on motion of Mr. Julius Rhoades, of counsel for such petitioners: it is ordered, that said Murray Hoffman be, and he hereby is appointed guardian ad litem for said infants, to appear for them and defend this suit in their behalf; but it is further ordered, that before entering upon the execution of his duties as such guardian, he execute a bond in the penalty of two thousand five hundred dollars, with one sufficient security to the people of this state, conditioned for the faithful discharge of the trust committed to him as such guardian, and to render a just and true account of his guardianship in all courts and places when thereunto required, which bond shall be filed in the office of the assistant register of this court, after the same has been approved as to its form and execution, and as to the sufficiency of such surety, by one of the master's of this court, residing in the city of New-York.

(Copy.)

JAMES PORTER, *Register*.

No. 274, Vol. II.—Page 175.

BOND OF GUARDIAN.

Know all men by these presents, that I, Murray Hoffman, of the city of New-York, counsellor at law, and I. A. J., of the same place, counsellor at law, are held and firmly bound unto the people of the state of New-York, in the penal sum of \$2,500, lawful money of the state of New-York, for which sum well and truly to be paid, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this day of August, in the year one thousand eight hundred and thirty-six.

Whereas, at a court of chancery for the state of New-York, at the town of Saratoga Springs, on the sixteenth day of August, in the year eighteen hundred and thirty-six, an order was made in a cause wherein J. G. A. and others are complainants, and S. A., and J. A., J. G. G., E. A. G., J. M. G., E. M. G., and S. A. G., infants under the age of twenty-one years, are with others defendants, appointing the above named Murray Hoffman guardian ad litem of

the before named infants, to appear for them and defend this suit in their behalf; and further ordering, that before entering upon the execution of his duties as such guardian, he execute a bond in the penalty of \$2,500, with one sufficient surety, to the people of the state of New-York, conditioned for the faithful discharge of the trust committed to him as such guardian, and to render a just and true account of his guardianship in all courts and places when thereunto required. Now the condition of this obligation is such, that if the said Murray Hoffman shall faithfully discharge the trust committed to him as such guardian, and shall render a just and true account of his guardianship in all courts and places when thereunto required, then these presents to be void, otherwise to remain in full force and virtue.

Witness.

(Usual Acknowledgement before a Commissioner, as if it was a deed.)

I approve of the within bond as to form and execution, and also of the sufficiency of the surety executing the same; such surety being worth the sum of \$2,500 over and above all debts and responsibilities which he owes or has incurred. New-York, September, 1836.

S. C., Master in Chancery.

No. 275, Vol. II.—Page 175.

PETITION FOR GUARDIAN OF RESIDENT INFANTS.

(Title.)

To, &c.

The petition of J. M., the above named complainant, respectfully sheweth, that the bill in this cause was filed on the day of last past, for the partition of certain lands and premises therein mentioned, situate in the city and county of New-York, and that subpoenas to appear and answer were duly issued thereupon against all the defendants; that one of the defendant's to such bill, viz. S. B., is an infant under the age of fourteen years, to wit, of the age of six years; and that a subpoena was, on the day of last past, served upon such infant, by delivering the same in the presence of M. B., the mother of such infant, explaining to her the object and nature of such subpoena, and of the bill filed in this cause. That such subpoena was returnable on the day of now last past, [*twenty days must have elapsed,*] and that no person has been appointed, or offered or applied to be appointed guardian ad litem of such infant, as your petitioner is informed and believes.

Your petitioner therefore prays, that the assistant register of this court may, by an order of this court, be appointed the guardian of such infant, for the purposes of such suit, and to protect the rights of the said infant therein.

And your petitioner, &c.

(Usual Jurat.)

ORDER UPON SUCH PETITION.

(Title.)

At, &c.

Upon reading and filing a petition of the above named complainant, duly verified, and also an affidavit proving the service of a copy of such petition upon [C. R., the general guardian of S. B., the infant named therein,] S. B. the infant named therein, made by delivering the same in the presence of M. B., the mother of such infant, together with a notice of the intention to present the same to this court, which service was made on the day of last past; thereupon, on motion of Mr. of counsel for the complainant, it is ordered, that J. W., the assistant register of this court be, and he is hereby appointed the guardian ad litem of the infant S. B., for the purposes of this suit, and to protect his rights and interests therein.

No. 275 A, Vol. II.—Page 177.

ANSWER TO BILL OF PARTITION.

The separate answer of, &c.

This defendant, &c., (see form No. 92,) admits, that the rights and interests of the several parties, complainant and defendant named in the bill of complaint, and to the several lots and parcels of ground therein mentioned and described, are truly set forth and stated in such bill; and this defendant submits to such decree as this court may make in the premises for a partition of such premises, or a sale thereof, or of such parcels thereof as shall be found incapable of division without injury to the parties.

Sworn, &c.

(Usual Jurat, if oath called for.)

No. 276, Vol. II.—Page 181.

DECREE IN PARTITION UPON BILLS AND ANSWERS OF ADULTS.

(Title.)

At, &c.

This cause coming on to be heard this day upon the bill of complaint, and the several answers of all the defendants therein, all such defendants being adults, and all admitting in their several answers the rights, titles, and interests in such premises as stated in the bill:—Thereupon, on hearing Mr. B. R., of counsel for the complainant, Mr. O., of counsel for the defendant, J. D. and Mr. B., of counsel for the other defendants, it is ordered, adjudged and declared, and this court doth order, adjudge and declare, that the rights, titles and interests of the parties, complainant and defendant, in and to the

premises whereof partition is sought, are as follows, to wit: That the complainant is seised of, and well entitled to an estate in fee, in and to the one equal undivided fifth part of such premises, that the defendant, J. D., is seised of, &c,

[And it being admitted by such pleadings, and at the bar, that such premises are capable of partition, thereupon it is ordered, adjudged and decreed, that partition be made. *See post*, No. 288, *third clause, &c.*]

Where
partition
can be
made.

[And it is further ordered, adjudged and decreed, that it be referred to S. C., one of the masters of this court, residing in the city of New-York, &c. *See post*, No. 282.]

Reference
to ascer-
tain if sale
necessary.

No. 277, Vol. II.—Page 183.

AFFIDAVIT TO ENTER ORDER UNDER 177TH RULE.

(Title.)

State of New-York,
City and County of New-York, } ss.

J. B., of the city of New-York, complainant in this suit, being duly sworn, saith that the bill in this cause is filed for the purpose of obtaining a partition of certain premises situate in the said city; that the rights and interests of the several defendants as stated in such bill are not contested or denied in the answers filed therein; that one of the said defendants is an infant, and hath put in the usual answer by J. B., her guardian ad litem, submitting her rights to the protection of this court,

Sworn, &c.

ORDER UNDER 177TH RULE ALONE.

(Title.)

At a Court of Chancery, &c.

On filing the affidavit of complainant, showing that the bill in the above cause was filed for a partition of certain premises as in said affidavit stated, and showing also that E. T. J. and C. B. J., two of the above defendants, who are infants, have by their guardian ad litem, W. J., put in the usual answer to the complainant's bill in this cause, submitting their interests to the protection of this court, and proving that the rights and interests of the several parties to the above suit, as stated in the bill of complaint in this cause, are not denied or contested by any of the parties to said suit, and that the complainant's bill of complaint in this cause has been taken as confessed by all the parties defendants in this suit, except the infants above mentioned; and on filing the written consent of the guardian ad litem for that purpose, and on motion of Amos Dean, solicitor for complainant, it is ordered, that it be referred to a master of this court, residing in the city of Albany, to take proof of the complainant's title and interest in the premises, and of the several matters set forth in the bill in

this cause, and to ascertain and report the rights and interests of the several parties in the premises, and an abstract of the conveyances by which the same are held.

(Copy.)

JAMER PORTER, *Register.*

No. 278, Vol. II.—Page 183.

ORDER OF REFERENCE UNDER 177TH AND 178TH RULES.

(Title.)

At, &c.

On reading and filing the affidavit of _____ by which it appears that the rights and interests of the several parties, as stated in the bill of complaint in this cause, are not denied or contested by the answer of any of the defendants, [or, by which it appears that the complainant's bill of complaint filed in this cause, has been taken as confessed by all the defendants,] [or, by which it appears that the complainant's bill of complaint has been taken as confessed by all the defendants except the defendants J. T. and R. B., and that the rights and interests of the several parties, as stated in such bill, are not denied or contested by the answer of the said J. T. and R. B.] [or, that the defendants S. P. and L. P., being infants, have put in the usual answer by their guardian,] and on motion of Mr. _____ solicitor for the complainant, it is ordered, that it be referred to D. C., one of the masters of this court, residing in the city of New-York, to take proof of the complainant's title and interest in the premises in said bill mentioned, and the right, title, and interest of the several defendants therein, and of the several matters set forth in such bill, and that he report such proofs and an abstract of the conveyances by which such title is held, and also what share or proportion of such premises belongs to each of the parties in this cause, and the nature and extent of their respective titles or interests in the premises.

And it is further ordered, that the said master also inquire and report, whether the said premises, or any part thereof, are so situated that a partition thereof cannot be made without great prejudice to the owners thereof, and that he state the particular facts and circumstances, if any, which render a partition impracticable or prejudicial to the interests of the parties; and if such master shall be of opinion that a sale of such premises, or any part thereof, is necessary, that he also ascertain and report whether any creditor, not a party to this cause, has a specific lien on the undivided interest or share of any of the parties, in the said premises, by mortgage, devise, or otherwise; and the name and residence of such creditor, and the nature of such lien or incumbrance, if any there be, as far as the same can be ascertained by such master; and in case such master finds that there is no specific lien in favor of any person not a party to this suit, that he further inquire and report whether the undivided share or interest of any of the parties in the premises, whereof partition is sought, is subject to any general lien or incumbrance by judgment or decree, and ascertain and report the amount due to any party to

this suit, who has either a general or specific lien on the premises to be sold, or any part thereof; and also the amount due to any creditor, not a party, who has a general lien on any undivided share or interest therein by judgment or decree, and who shall appear and establish his claim on such reference. And it is further ordered, that such master, if requested by either of the parties who shall appear before him on such reference, shall also ascertain and report the amount due to any creditor, not a party to this suit, which is either a specific or general lien or incumbrance upon all the shares or interests of the parties in the premises to be sold, and which would remain an incumbrance thereon in the hands of the purchaser.

No. 279, Vol. II.—Page 184.

ABSTRACT OF TITLE, &c., TO BE LAID BEFORE THE MASTER.

(Title.)

Abstract of title to a farm in the town of Westchester, county of Westchester, and State of New-York, whereof partition is sought in this cause.

1795.

S. V. W. and H. his wife,	}	Warrantee deed with full covenants, dated 29th Sept. 1795, and recorded on the records of Westchester Co., in liber W. of deeds, pages 139, &c., on the 16th July, 1822.
to		
I. C.		

Consideration, £10,000.

Conveys all that the easternmost part of all that certain farm, tract, neck or parcel of land and meadow, called Cornwell's Neck, situate in the county of Westchester, which was divided between I. M. and L. G., by certain lines and divisions and partition thereof, made as the same was butted, bounded and described, on the 3d day of June, 1784.

And also, of all that piece or parcel of land, situate, lying and being in the county of Westchester, to say, on the right side of a ditch that is now already cut to the westward, adjoining the land of I. C., as he goes on to the neck, from the house formerly called Smith's house, from the causeway to the main creek that divides the land of the said I. C. and S. P., containing one or two acres more or less.

S. P. and S. his wife,	}	Warrantee deed dated 3d day of June, 1799, consideration \$50, conveys all that piece or parcel of land, situate, lying and being in the county of Westchester, to say, on the right side of a ditch that is now already cut, to the westward adjoining the land of the said I. C., as he goes on to the neck from the house formerly called Smith's house, from the causeway to the main creek that divides the land of the said I. C. and S. P., containing one or two acres more or less.
v.		
I. C.		

Note. This deed was never signed by Mrs. P., neither was it ever acknowledged before an officer authorized to take the proof or acknowledgment of deeds. There is a receipt endorsed on the back thereof, for the full consideration money.

Will of I. C.

I. C. departed this life on or about the 1st March, 1815, and by his will, dated 26th September, 1810, executed in due form of law, to pass real estate, gave to his wife, during her natural life, such portion of the rents, income and profits of his real estate, &c. [Will set out in substance.]

He appoints W. B., C. B. and C. D., executors.

By a codicil to the said will, he appoints J. F. D. and H. R., executors, in addition to the three named in the will. He left a widow, C. C., three sons, W. J. C., I. S., and A. W., and five daughters, E., J., C., C., and E.

Death of C. C.

C. C., the wife of the said I. C., departed this life on or about the 2d day of September, 1819.

1820.

I. S. C. and M. S. his wife, to E. L.	}	Warrantee deed, dated 29th day of April, 1820, and recorded in Westchester county clerk's office, in liber U. of Deeds, page 285, on the 18th June, 1820.
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Consideration, \$4,000.

Conveys all the estate, right, title and interest of the said I. S. C., being the one undivided third part in and to the lands and real estate in Westchester county, as above described, of which said I. S. C. died, seised and possessed, and given and bequeathed to said J. S. C., by the will of said I. C.

1821.

E. L. and S. his wife, to D. S., E. H., and W. C.	}	Deed dated 29th May, 1821, and recorded in Westchester county clerk's office, in liber 57 of Deeds, page 454, on the 19th March, 1825.
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Consideration, \$1.

Conveys the one undivided third part of the premises in question, and also all his estate not situate in the State of New-York, and his goods, chattels, and personal property, in trust, to collect the said debts, and to sell and convert the said lands, goods and chattels into money, and the proceeds thereof to be disposed of in the manner therein mentioned.

1822.

D. S., E. H. and W. C. to T. C.	}	Deed dated 9th day of July, 1822, and recorded in Westchester county clerk's office, in liber W. of deeds, page 383, on the 14th June, 1823.
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Consideration, \$3,000.

Conveys the one undivided third part of the premises in question:

1823

T. C. and C. his wife, } Deed dated 31st day of May, 1823, and recorded
to } in Westchester county clerk's office, in liber
A. W. C. } W. of Deeds, page 386, &c., the 14th June, 1823.
Consideration, \$3,300.

Conveys the one equal undivided third part of the premises in question.

Death of W. J. C., and Will.

W. J. C. departed this life on or about the 6th day of August, 1824, and in and by his will, dated the 18th March, 1823, he gives his wife S. A. C., during her life, if she continues his widow, an annuity of \$700, which he makes a charge upon his estate, which said annuity is in full of her dower in his estate; he thus says:—

I do hereby give, bequeath and devise to my two sons, &c. [*Will set out.*]

He appoints his wife, S. A. C., executrix, and A. Q. and J. R., executors. He left a widow, S. A. C., and three children, viz., E. M., W. O., and J.

Death of E. M. C.

E. M. C. departed this life on or about the 27th day of April, 1825, intestate and without having been married.

Death of J. C.

J. C., named in the will of W. J. C., departed this life on or about the 6th day of September, 1829, intestate, and without ever having been married.

Bill filed for partition.

On the 13th day of March, 1835, A. W. C. filed his bill in the court of chancery of the State of New-York, before the chancellor, against W. O. C., J. C., I. S. C., A. Q. and S. his wife, S. A. C., and the Orphan Asylum Society of the city of New-York, for the partition and division of the property in question among the respective owners thereof.

Death of I. S. C.

On the 14th day of March, 1835, I. S. C. departed this life at the city of London, in the kingdom of Great Britain, intestate, and without leaving any lawful issue.

Death of A. Q.

On the 26th day of May, 1835, A. Q. departed this life at the city of New-York, intestate, leaving his wife S. him surviving.

Amendment of Partition Bill.

On the 25th August, 1835, upon it being suggested to the said court of chancery by the said complainant, that the said I. S. C. had departed this life since the filing of the bill of partition, without leaving lawful issue him surviving, whereby his right and interest has become vested in and survived to the complainant as was alleged, and it being also suggested that A. Q., another of the defendants, had departed this life since the filing of the said

bill, whereby his interest, if any, survived to his wife, the defendant, S. Q., as was alleged, it was ordered by the said court of chancery, that the said partition suit do proceed in the name of the complainant, and against the defendants, omitting the names of the said defendants, I. S. C. and A. Q.

Order of Reference.

The partition bill having been taken as confessed by the defendant, S. Q., for the want of an appearance, and having been answered by M. H., guardian *ad litem* of the infants, defendants, W. O. C. and J. C., and by the defendants, S. A. C., and the defendants, the Orphan Asylum Society of the city of New-York, the rights and interests of the several parties stated in the bill of complaint, not having been contested or denied by said answers, it was referred to D. C., to take proof of the title and interest of the complainant in the lands and premises set forth in the bill of complaint, and also to take proof of the several matters set forth in the said bill of complaint, and to ascertain and report the rights and interests of the several parties in the premises, and whether the said premises, or any part thereof, are so circumstanced, that a partition thereof could be made without great prejudice to the owners, pursuant to the rules of the said court.

Claim of complainant, A. W. C.

The said A. W. C. hereupon claims to be and charges, that he is legally entitled to two equal undivided third parts of the said lands and premises hereinbefore mentioned, under and by virtue of the last will and testament of the said I. C., deceased, and under the several deeds of conveyance from the said I. S. C. and wife, of the estate, right, title and interest of the said I. S. C., in and to the said lands and premises, to the said A. W. C. hereinbefore mentioned, that if the said deeds of conveyance of the interest of the said I. S. C. have not been sufficient in law to pass the estate of the said I. S. C. to the said A. W. C., under the provisions of the last will and testament of the said I. C., deceased, then the said A. W. C. claims to be and charges, that he is lawfully entitled to the share or interest of the said I. S. C., in and to the said lands, under and by virtue of the last will and testament of the said I. C., deceased, as sole survivor of the three sons of the said I. C., deceased, to whom said lands and premises were devised in and by his last will and testament, by reason of the death of the said I. S. C., one of the said devisees, without leaving any lawful child or children him surviving, before any division of the said lands and premises had been made. And the said complainant craves leave to alter, amend, or add, to this his charge, upon the said title as he may be advised. New-York, February 1, 1836.

EDWARD SANDFORD,

Solicitor, &c. of Counsel for A. W. C.

No. 280, Vol. II.—Page 187.

ADVERTISEMENT OF MASTER FOR CREDITORS.

In Chancery,
Before the Chancellor.

L. C. and D. C.

v.

P. B., E. McG., J. W. McG., M. C. }
 B., J. K. B., A. B., S. B., G. }
 R., A. W. and J. S.

Notice in partition to general lien creditors.

In pursuance and in virtue of an order of this honorable court made in the above entitled cause, dated the third day of May, 1838, and of the statute in such case made and provided, notice is hereby given to all persons having any general lien or incumbrance, by judgment, or decree, or otherwise, on the undivided share or interest of any of the parties in the premises hereinafter referred to, to produce to me, the undersigned, one of the masters of the said court, on or before the twenty-fourth day of December next, at my office, No. 1, Stanwix Hall, in the city of Albany, proof of their respective liens and incumbrances, together with satisfactory evidence of the amount due thereon, and to specify the nature of such incumbrances and the dates thereof respectively.

The premises referred to are *all* that certain lot, &c.

JULIUS RHOADES, *Master in Chancery.*

No. 280 A, Vol. II.—Page 187.

The following are the searches which I caused to be made on a reference under 177th and 178th rules, if a sale of the premises, or any part thereof, is necessary. (a) :

J. RHOADES.

I. *Searches in County Clerk's Office.**Mortgages.*

1. To Individuals.
2. " Commissioners or Loan Officers, for loans of 1792 and 1808.
3. " Commissioners for loaning the United States' deposit fund.

Search from April 4, 1837.

Judgments.

1. In Common Pleas,
2. " City Courts.
3. " Justices' Courts. (Transcripts).

(a) It is not of course required to make all these searches in every case. A discretion must be exercised.

Notices of commencement of Suits in Equity against Heirs and Devisees. Compare 2 R. S., 174, § 43, with *ibid*, 454, § 47. Vide, 2 *Paige*, 592.

Bonds given by collectors of taxes, and filed in county clerk's office. See 1 R. S., 346, § 20.

Certificates filed in the county clerk's office by the officers of *mutual insurance companies*, create a lien upon the land of the person who gives the note to the company and receives the policy of insurance. If the certificate is not filed in the county clerk's office, the transaction of issuing a policy on receiving a note from an individual, does not create a lien on his land. Laws of 1836, p. 44, § 8, and p. 298, § 3.

Search from March 8, 1836.

Deeds given by the comptroller for lands sold for taxes, quit rents, road taxes, drain taxes, &c., are recorded in the county clerk's office. In many cases where lots sold for taxes have not been redeemed, the purchasers have not applied for deeds; these cases, as well as those where deeds have been given are to be found in Appendix E., Assembly Journal of 1826, and in volume 5, Assembly Documents of 1835, No. 380, both of which are in the offices of the county clerks. If these documents show an incumbrance, application should be made at the comptroller's office, to ascertain whether it has been removed, unless the owner has an assignment of the certificate originally given by the comptroller to the purchaser at the tax sale. In relation to the sales of lands for taxes in 1834 and 1839, application must be made at the comptroller's office, by letter or otherwise, where searches are made without fee. N.B. The searches under the 5th head in the comptroller's office are unnecessary, except from the 1st January, 1827, if the documents above mentioned are examined.

II. Searches in the Clerk's Office of the Supreme Court.

Judgments.

1. Supreme Court.
2. Decrees in Chancery.
3. Transcripts of Judgments in United States' Courts. See Laws of 1832, p. 375, § 4.

The clerks of the United States' courts have stipulated to furnish transcripts of judgments in said courts, as provided in the 4th section, chapter 210, of the Laws of 1832. They have not, however, furnished these transcripts for some time.

Searches should therefore be made in the offices of the clerks of the United States' Courts at Utica and New-York, from the period when their last transcripts were furnished under the stipulation before referred to. If the master can be satisfied that there are no liens against the land in question in the courts of the United States, he should not subject the parties to the expense of these searches, as the costs of such searches are frequently very great.

A search at either of the supreme court clerks' offices at New-York, Albany, or Utica, will be sufficient. [The clerk's office at Geneva has not been established ten years, and a search there is not a certain protection against judgments.] The clerks of the supreme court exchange transcripts of judgments docketed once in fifteen days, § 15, p. 361, 2 R. S. And the registers,

assistant registers, and clerks of the court of chancery, are required to transmit to the clerks of the supreme court, transcripts of all final decrees, immediately after the same are docketed, § 95, p. 182, 2 R. S. The certificate given by one of the clerks of the supreme court, is not conclusive that a judgment may not have been entered up against the individual at one of the other offices, subsequent to the time when the last transcript from the office was made out.

III. *Circuit and District Court of the United States.*

Judgments.

1. In the southern district in the clerk's office in New-York.
2. And where the land lies in the northern district, search to be made in the office at New-York, and also in Utica.

IV. *Searches in the Office of Secretary of State,*

From 1807, to October 1, 1822.

Mortgages given to the state for land sold, and for loans to individuals, were recorded in the office of the secretary of state, and where these mortgages have not been paid, they are a lien on the land mortgaged. Transcripts of these mortgages were made out in 1837, and were transmitted to the commissioners for loaning certain monies belonging to the United States, and they were directed to deposite the transcripts in the office of the county clerk, where the mortgages taken by them are also deposited. An examination of these transcripts will supersede the necessity of having search made in the office of the secretary of state.

There is a mortgage of \$800,000, recorded in the office of the secretary of state, given by the Delaware and Hudson Canal Company, which is an incumbrance on lands sold by said company along the line of the canal.

V. *Searches in the Comptroller's Office.*

Sales of Lands.

1. For quit rents. These can only apply to lands which were originally granted by patents from the King of England.
2. For taxes on non-resident lands, from 1814 to 1834.
3. For the United States' tax sales, in 1808 and 1826, 1830 and 1839.

There have also been several sales of lands by the comptroller for road taxes. Any information respecting these sales, or those enumerated above, may be obtained without the charge of any fees, by addressing a letter to the comptroller.

VI. *City and Village Assessments.*

See Laws of respective Cities and Villages.

VII. Inquire in relation to the dower rights of parties, and those of previous owners.

VIII. When the property has descended, great care should be taken as to the rights of the heirs, and if title is by will, to ascertain who were the

devisees, and the will should be carefully examined, to see that it is so executed as to convey real estate.

Note.—In partition suits, the searches for *general* liens are unnecessary, except against those persons who could have incumbered the whole of any separate lot or parcel of the premises as the advertisement under 2 R. S. 324, § 43, 2d ed., cuts off all general liens upon any *undivided interest* or *shares* in the land.

No. 281, Vol. II.—Page 188.

MASTER'S REPORT UNDER 177TH AND 178TH RULES.(a)

In Chancery.
(Title.)

To the Chancellor of the State of New-York.

In pursuance of an order of this court, made in the above cause, bearing date the third day of May, in the year one thousand eight hundred and thirty-six, by which, among other things, it was referred to the undersigned, one of the masters of this court, residing in the county of Onondaga, to take proof of the complainant's title and interest in the premises mentioned in the bill of complaint in the said cause, and of the several matters set forth in the said bill, and to report such proof, and an abstract of the conveyances by which the title of the said complainant to the said premises is held; and to inquire and ascertain whether the said defendants, H. and D., have any estate or title in the said premises as charged in the said bill; and to ascertain and report what share or proportion of the said premises belong to each of the parties in the said cause, and the nature and extent of their respective titles and interests in the said premises. And also to report the amount due on the legacies to the children of C. S., mentioned in the pleadings in this cause; and if it should appear to the said master by due proof, that the said L. E. has paid to the said children of the said C. the said legacy, whereby he is entitled to be substituted in their place, and has purchased and taken a conveyance from the said N. D. and E. his wife, and the said J. S. O. and E. his wife, of their interest in the said premises, that the said master report the fact; and if not, then how otherwise. And to examine, if requested by any of the parties, and to report whether the said premises, or any part thereof, are so circumstanced that a partition thereof cannot be made without great prejudice to the owners thereof, and that the said master state the particular facts and circumstances, if any, which render a partition impracticable or prejudicial to the interests of the parties. And also to inquire and report in what proportion the legacy to the said children of C. S. are a lien and charge upon the several interests and rights which the parties in this cause have in the premises:—

(a) The great importance of the report in partition cases has induced me to select two, made by careful and well informed masters, which I think will greatly aid the practitioner.

I do respectfully report, that I caused the solicitors for the respective parties who have appeared in the said cause, to be duly summoned to attend before me, upon the matters referred as aforesaid, and thereupon proceeded to a hearing of the said matters.

That upon such reference, a deed covering the said premises executed to J. S., deceased, in his life-time, in the year 1800, was produced to me, an abstract of which is set forth in the annexed abstract of Title Deeds, &c.; and it was proved that the said J. possessed the said premises, claiming the same as his own from the said year 1800, until his death. From which it satisfactorily appears, that the said J. S. was, at the time of his death, seised in fee simple, in possession of the premises set forth in the said bill of complaint.

It was also proved to me, that the said Jonas Slott, (or Sloat,) on the twentieth day of August, in the year one thousand eight hundred and nineteen, made and published his last will and testament, of which a copy is annexed in the said abstract; and that he died at or about the time stated in the said bill.

That A. S., the widow of the said Jonas Sloat, died in or about the year one thousand eight hundred and thirty-three.

That the children of J. S., were the following, viz.

1. J. H. S., the complainant.
2. J. S., who survived his father.
3. C. S., who died before his father.
4. M. D., who died before her father.
5. C. E., the wife of L. E.
6. E. M., the wife of E. M.

That the said C. S. left but two children, viz. E., the wife of N. D., and E., the wife of J. S. O., who were both living at the death of the testator.

That the said M. D. died before the said testator, leaving no issue. And therefore the said testator died intestate as to the portion of the premises, which by his said will was devised to the said M. D.

That the said J. S. died in or about the year one thousand eight hundred and thirty-two, during the life-time of his mother, leaving him surviving, his wife Catharine who is still living, and his only children and heirs, J. S., H. S., H. S., A. S., and M., the wife of J. L.

I do therefore report, that upon the death of the said J. S. the elder, the title to the said premises vested as follows, viz.

The same A. S., his widow, became seised of the whole of the same, during her life.

1. The complainant, J. H. S., became entitled in fee in remainder to one equal undivided fourth of the said premises, subject to the said life estate, and to the payment of one-third of the said legacies to the said children of C. S., by virtue of the said devise; and as heir at law he became entitled to one equal undivided twentieth of the said premises, subject to the said life estate.

2. The said J. S. became entitled in like manner to one-fourth, and to one-twentieth, charged with the same burthens.

3. The said E. M., the wife of E. M., became entitled in like manner to

one-fourth and to one-twentieth of the said premises, charged with the same burthens.

4. The said C. E., the wife of the said L. E., became entitled in fee, to one equal undivided twentieth of the said premises, subject to the said life estate of A. S.

5. The said E. D., wife of the said N. D., and the said E. O., the wife of the said J. S. O., each became entitled to one equal undivided fortieth of the said premises, subject to the said life estate; and each became entitled to receive the said legacy of thirty dollars each, according to the said will, and which was and remained a charge upon the three fourths of the said premises, devised to the said J. H. S., J. S., and E. M.

I do further report, that it was proved to me, that the said E. M. and E. his wife, on the tenth day of April, in the year one thousand eight hundred and twenty-four, conveyed in fee simple to the said L. E., all their right and title to the said premises, under and by virtue of the said will; whereby the said L. E. became entitled to one fourth of the said premises, subject as aforesaid.

It was also proved to me, that on the twenty-ninth day of September, in the year eighteen hundred and thirty-four, the said N. D. and E. his wife, and J. S. O. and E. his wife, conveyed, in fee simple, to the said L. E., all their right and title to the said premises, including their aforesaid legacies, charged thereon, which were then paid to them by the said L. E.

It was also proved to me, that J. H. and L. B. D., on the fifteenth day of December, in the year one thousand eight hundred and seventeen, recovered a judgment in the supreme court of judicature of this state, against the said J. S.; that in the year one thousand eight hundred and twenty-four, the sheriff of the county of Cayuga, by virtue of a writ of *testatum fieri facias*, issued upon the said judgment, sold to the said J. H. and L. B. D., all the right, title and interest of the said J. S., in and to the said premises in the said bill described; and that the said sheriff conveyed the same to the said J. and L. by a deed in fee simple, in pursuance of the said sale, on the nineteenth day of April, in the year one thousand eight hundred and twenty-seven.

It was further proved, that J. H. died previous to the date of the said last mentioned deed; whereby the whole legal title conveyed by the said deed vested in the said L. B. D. And that the said L., on the twenty-sixth day of June, in the year one thousand eight hundred and thirty, released to L. H., the son of the said J., in fee, one equal undivided half of the premises conveyed by the said sheriff's deed.

It was also proved that the said J. H. duly made and published his last will and testament on the twenty-third day of October, in the year one thousand eight hundred and seventeen, and thereby appointed the said L. H., his sole executor, and bequeathed to the said L. the residue of his personal estate. Execution of the said will was granted to the said L. H., by the surrogate of the county of Ulster, on the 18th day of April, in the year 1836.

I therefore find and report, that the rights and interests of the respective parties in the said premises, whereof partition is sought by the said bill, are as follows, viz:

1. The said complainant is seised in fee of and in three equal undivided

tenth parts of the said premises ; subject as to one-fourth, to the payment to the said L. E. of twenty dollars, with interest from the first day of April, 1834, being the said complainant's proportion of the said legacies charged by the said will of the said J. S., upon the said premises.

2. The said L. R., is seised in fee of and in three equal undivided tenth parts of the said premises ; and has a lien upon the one half of the said premises which was devised to the said J. H. S. and J. S., for two-thirds of the said legacies, with interest thereon from the first day of April, in the year 1834.

3. The said C. E., wife of the said L. E., is seised in fee of and in one equal undivided twentieth part of the said premises.

4. The said E. M., wife of the said E. M., is seised in fee of and in one equal undivided twentieth part of the said premises.

5. The said L. B. D. is seised in fee of and in three equal undivided twentieth parts of the said premises ; subject as to one-eighth of the premises to the payment of ten dollars, with interest as aforesaid to the said L. E.

6. The said L. H. is seised in fee of and in three equal undivided twentieth parts of the said premises ; subject as to one-eighth of the premises to the payment of ten dollars, with interest as aforesaid to the said L. E.

The defendants, J. S. O. and E. his wife, N. D. and E. his wife, J. S., A. S., H. S., H. S., and J. L. and M. his wife, have not, nor has either of them, any right, title or interest in the said premises, or any part thereof.

I further report, that the said premises are so circumstanced, that a partition thereof cannot be made without great prejudice to the owners thereof. The premises are described in the bill of complaint, as containing about seventy acres ; and in the answer of L. E. and C. his wife, as containing about fifty-three acres. The proof adduced tends to confirm the latter description. It was proved to me that there are no buildings on the premises, and that the disparity in value is great between the east and west parts of the premises ; that the premises adjoin the road on the north, and a part of them are not desirable as a separate possession. These facts, in connexion with the number of the owners in common, and the minuteness of the interests of two of the parties, (being but one-twentieth each,) render a partition almost impracticable, and certainly prejudicial, in my opinion, to the interests of the parties.

And I do further report, that there is no specific lien on the undivided share, or interest of any of the parties.

Annexed is an abstract of the several title deeds, conveyances, &c., which were produced to me on the said reference, and by which the titles of the respective parties are held, to which I pray leave to refer.

All which is respectfully submitted.

Skaneateles, January 7th, 1837.

LEWIS H. SANDFORD, *Master in Chancery.*

Abstract of Conveyances, &c.

I.

J. T. and B. his wife, } Deed in fee, dated January 15, 1800, for 102 acres,
 to } on lot No. 54, Scipio.
 J. S. } Duly acknowledged.

Recorded in Cayuga clerk's office, August 29th, 1800, in Book B. of Deeds, folio 136, &c.

II.

J. S.'s last will } "The last will and testament of J. S., of the town of
 and testament. } Scipio, in the county, &c." (*Insert will in full.*)

The will is brought into court, and filed with this report.

III.

E. M. and E. his wife, } Deed in fee, dated 10th April, 1824, for all the gran-
 to } tor's right and title to that part of the farm of J.
 L. E. } S., deceased, which lies south of the state road,
 and extends to the land of S. H., deceased, under and by virtue of the last
 will and testament of the said J. S., deceased.

Duly acknowledged. Recorded May 1, 1824, in Book B. B. of Deeds, pages 85, &c.

N. S. D. and E. his wife, and } Deed in fee, dated September 29, 1834, for
 J. S. O. and E. M. his wife, } that part of lot No. 24, Scipio, situated
 to } south of the state road, and extending south
 L. E. } to S. H.'s land, which descended to the
 said E. and E., as heirs of J. S., deceased. And admitting the payment to
 them of the two legacies of thirty dollars each, required to be paid to them as
 heirs of C. S., deceased, by the will of the said J. S.

Duly acknowledged by the grantors.

Recorded October 21, 1834, in Book U. U., page 227.

IV.

Supreme Court.

J. H. and L. B. D. } Exemplification of record of judgment for debt, \$1350,
 v. } and damages and costs \$15 25.
 J. S. } Docketed in New-York, December 15th, 1817.

R. & H., Attorneys.

The same } Exemplification of alias test. *fi. fa.* to Cayuga, tested February
 v. } 28th, and returnable May 15, 1829, on the above judgments,
 The same. } with direction to levy \$872 26, and interest, from 19th No-
 vember, 1817, and \$18 56, and interest, from 15th December, 1817. With
 the return of N. G., sheriff, endorsed that there were no goods and chattels,
 &c., and that he had raised of lands of the defendant, \$502.

Writ filed in Utica, June 16, 1828.

N. G., late sheriff of Cayuga county, } Deed dated April 19, 1827, reciting
to a levy and sale by virtue of the
J. H. and L. B. D. } above execution, more than fifteen months previous to the grantees of the right, title and interest of J. S. to about 100 acres, on lot No. 54, Scipio, bounded as are the premises in the bill of complaint.

Acknowledged. Recorded April 9, 1828, in Book H. H. of Deeds, page 398, &c.

L. B. D. } Release in fee, for one undivided half of the premises described
to in the deed last above, reciting that J. H. died before the date
L. H. } of that deed, and that L., his son, is entitled to his half of the land. Dated June 26, 1830.

This release is brought into court, and filed with this report.

J. H.'s last will } Dated October 23, 1817. Proved and registered in the
and testament. } office of the surrogate of the county of Ulster, on the 13th and 18th days of April, 1826, and execution thereof granted to L. H., the executor and residuary legatee.

Dated Skaneateles, January 7th, 1837.

LEWIS H. SANDFORD, *Master in Chancery.*

ANOTHER REPORT.

In Chancery,

Before the Chancellor.

L. C. and D. C.

v.

P. B., E. McG., J. W. McG., M. C. B., }

J. K. B., A. B., S. B., and G. R.

To the Chancellor of the State of New-York.

In pursuance of an order of this honorable court, made in this cause, and dated the 3d day of May, 1838, by which it is referred to me as one of the masters of this court, to take the proofs and make the inquiries therein directed:—

I, the subscriber, the master named in said order of reference, do respectfully report that I have been attended on said reference by the solicitor for the complainants, and by the guardian ad litem of said infant defendants, and have taken proof of the material facts stated in the bill of complaint which is filed in this cause, which proof, except such portions thereof as is documentary, is hereto annexed, and I am of opinion, and do so report, that the material facts stated in said bill are true as therein set forth, *except as herein after specified.*

The following is an abstract of the conveyances, &c., by which the title to said premises is held, viz :

First parcel containing 25 Acres.

No. 1. P. S. and B. his wife, } Deed with full covenants. Dated, June 14th,
 to } 1800. Consideration 100l. Acknow-
 J. K. B. } ledged May 11, 1812, before E. D. Hall,
 master in chancery. Not recorded.

No. 2. J. K. B. } *Devise.*
 to } Will dated December 10th, 1813. Devises
 A. P. V., H. B. and D. B. } all testator's real estate, as follows:
 "First. I give and devise unto my grandson, A. P. V., the one equal half
 of *my real estate*, and I further give and devise unto my grand-daughters,
 H. B. and D. B., the other equal half of *my real estate*, to be equally divided
 among them.

No. 3. Death of J. H. B. } Occurred March 9, 1815. He died seised of
 } the premises in question.

No. 4. Death of H. B. } Occurred November 28th, 1829. She died
 } intestate, unmarried, and without issue.
 She left her surviving, the complainant, D. C., and the defendants, E. McG.,
 M. C. B., J. K. B., A. B., and S. B., her brothers and sisters, her heirs at law.

No. 5. D. B. with L. C. } Intermarriage.
 } 25th February, 1832.

No. 6. A. P. V. } Quit claim deed. Dated, 28th May, 1832.
 to } Consideration \$50. Acknowledged 28th
 L. C. and D. his wife, } May, 1832, before E. D. H., commissioner
 and widow P. B. } of deeds. Not recorded.

If I am correct in the opinion that a fee in the estate passed to the de-
 visees of J. K. B., under his will, then the legal estate and interests of the
 respective parties in said lot, are as follows:—

The complainant, L. C., and E. his wife, in right of said D., are seised of
 and well entitled to an estate in fee simple, as tenants in common with the
 defendants of, in and to one equal undivided fourth part of said lot, as de-
 visee of said J. K. B., deceased, $\frac{1}{4}$
 Also, as heir at law of H. B., deceased, of $\frac{1}{2}$ of one other $\frac{1}{4}$ of said lot, . . . $\frac{1}{4}$
 Also, as grantee of A. P. V., of $\frac{1}{2}$ of one other $\frac{1}{4}$ of said lot, $\frac{1}{4}$
 The complainant, L. C., is fined in fee, in his own right, as one of the
 grantees of said A. P. V., of $\frac{1}{2}$ of $\frac{1}{4}$ of said lot, $\frac{1}{4}$
 The defendant, P. B., as one of the grantees of said A. P. V., is seised
 in fee, in her own right, of $\frac{1}{2}$ of $\frac{1}{4}$, $\frac{1}{4}$
 The defendant, J. McG. and E. his wife, in right of said E., as heir at
 law of said H. B., are seised in fee of $\frac{1}{2}$ of $\frac{1}{4}$ of said lot, $\frac{1}{4}$
 The defendants, M. C. B., J. B., A. B., and S. B., are each seised in fee,
 in their own rights, as heirs at law of said H. B., of $\frac{1}{2}$ of $\frac{1}{4}$ of said lot, . . . $\frac{1}{4}$

$\frac{1}{4}$

The defendant, G. R., has no legal estate or interest in said lot.

As to the Second Lot, or tavern stand.

- No. 1. C. T. H. and C. } Warrantee deed. Dated, 11th of May, 1812.
his wife, } Acknowledged same day, before E. D. H.,
to } master in chancery. Not recorded. Conveys
J. K. B. } the premises in question.
- No. 2. J. K. B. }
to } Will and devise above referred to, dated 10th
A. P. V., H. } December, 1813.
B. and D. B. }
- No. 3. Death of J. K. B. } Occurred March 9, 1814. He died seised of said
lot.
- No. 4. Death of H. B. } Occurred November 28th, 1829, as above set
forth.
- No. 5. Intermarriage of } Occurred 25th February, 1832.
D. B. with L. C. }
- No. 6. L. C. and D. his wife, }
and P. B., widow, } Quit claim deed, dated, 28th May, 1832, of all
to } their interest in said lot.
A. P. V. }

The interest of said D. was as devisee of J. K. B., $\frac{1}{4}$, $\frac{6}{24}$
As heir at law of said H. B., $\frac{1}{4}$ of $\frac{1}{4}$, $\frac{1}{24}$

 $\frac{7}{24}$

L. C. had no interest except in right of his wife, and P. B. had none at all.

The rights of the parties then stood as follows, viz.,

A. P. V. W., $\frac{1}{4}$, as devisee of J. K. B., $\frac{12}{24}$
And as grantee of C. and wife, $\frac{7}{24}$

 $\frac{19}{24}$

J. McG. and wife, in right of his said wife, $\frac{1}{4}$ of $\frac{1}{4}$, $\frac{1}{24}$
and M. C. B. and J. K. B., and A. B. and S. B., each $\frac{1}{4}$ of $\frac{1}{4}$, $\frac{3}{24}$

 $\frac{4}{24}$

- No. 7. A. P. V., } Warrantee deed, dated 13th June, 1832, con-
to } sideration \$500; recorded in Greene county clerk's
G. R. and H. M. R. } office, June 29, 1832.

G. R. and M. R. his wife, }
and H. M. R. and E. his } Warrantee deed, dated July 5th, 1834, con-
wife, } sideration, \$900 00, recorded in Greene county
to } clerk's office, in book W. of Deeds, pages 234,
G. B. R. } 235, June 15th, 1835.

The said defendant G. B. R., is therefore seised in fee simple of and well entitled to nineteen equal undivided twenty-fourths($\frac{1}{4}$) of said lot, as tenant in common with said defendants, J. McG. and E. his wife, M. C. B., J. K. B., A. B. and S. B., $\frac{1}{4}$
 Said defendants J. McG. and E. his wife, in right of said E., are seised in fee as tenants in common as aforesaid, of $\frac{1}{4}$ of $\frac{1}{4}$, $\frac{1}{16}$
 And the said defendants M. C. B., J. K. B., A. B. and S. B., are each seised *in fee* as tenants in common as aforesaid, of $\frac{1}{4}$ of $\frac{1}{4}$, $\frac{1}{16}$

 $\frac{3}{4}$

The complainant, and the defendant P. B., have no interest in said lot. And the facts stated in said bill, so far as respects the rights of the parties in and to said premises, are erroneous in such particulars, as they vary from the rights of said parties as above set forth. Said bill is also erroneous in the statement of the children of A. G. B., who survived him,—the complainant, D. C. and H. B., two of his daughters, having survived him, in addition to those stated in said bill.

I do farther report, that I am of opinion neither of said parcels can be partitioned among the parties interested therein, according to their respective rights, or so nearly so, that owelty or equality of partition can be made from some of them to others, for the reason that one is a tavern stand and its appurtenances, incapable of any division whatever, without great injury, and the other is a small farm of 25 acres of land, incapable of being divided without greatly lessening its value into five parts, which is the number of parties interested therein, and one of them owning but $\frac{1}{4}$ part.

And I do further report, that having ascertained that A. W. held a mortgage on the complainants' undivided interest in the said 25 acre lot, and that J. S. held a mortgage on the undivided interest of the defendant G. R., in said tavern stand, and that there were no other specific liens, or any undivided share of said premises, I suspended proceedings under said order of reference, and the complainants amended their bill and made said A. W. and J. S. parties defendants thereto, and the said bill as amended, was regularly taken as confessed by them for want of appearance; thereupon I advertised according to law for general lien creditors, by judgment or decree, upon any undivided share or interest in said premises, to come in and produce their claims, and produce satisfactory evidence to me of the amount due thereon; but no such liens were produced. I do further report that there is due to said defendant A. W., at the date of this my report, for principal and interest on his said bond and mortgage, the sum of \$477 89, as will more fully appear by reference to schedule A. annexed to this my report, and forming a part thereof; and that there is nothing due to the defendant J. S., at the date of this my report, for principal and interest on his bond and mortgage, the same having been fully paid, as appears by the deposition of A. D. hereto annexed.

I do further certify and report, that the defendant G. R., having suffered the bill filed in this cause to be taken as confessed by him for want of appearance, on the assurance of the complainants' solicitor, that his rights and

interests were fully stated in said bill, and that they would be protected by the decree in this cause, I advised said defendant to procure the stipulations of said complainant, and of said defendant P. B., which are hereto annexed, to the end that this court might direct such compensation to be made to said G. R. out of said complainants and said defendant P. B.'s distributive share of the proceeds of said premises respectively, as may be just, in consequence of their not having conveyed to him an estate in fee simple, to the whole of said tavern stand.

And I do further report, that at the request of the counsel for the complainants who attended before me on said reference, I have caused the necessary searches to be made, and cannot find that any creditor who is not a party to this suit, has either a specific or general lien or incumbrance on all the shares or interests of the parties in said premises, and which will remain as an incumbrance thereon, in the hands of the purchaser.

Schedule A. referred to in the preceding report.

A bond from L. C. to A. W., penalty \$900 00. Dated January 1st, 1834. Condition to pay \$450 00 on or before January 1st, 1836, with lawful interest annually, accompanied by a mortgage.

Interest paid to March 1, 1836.

Principal sum due, \$450 00

Interest from March 1, 1836, to January 19, 1839, being 10 months,

19 days, 27 89

Wholesum due this day, \$477 89

Albany, January 19, 1839.

No. 282, Vol. II.—Page 192.

DECREE IN PARTITION WHERE A SALE IS NECESSARY.

At a Court of Chancery, held for the State of New-York, at the City of New-York, on the twenty-second day of February, one thousand eight hundred and thirty-six.

Present:

WILLIAM T. McCOUN, *Vice-Chancellor of the First Circuit.*

T. P., C. C. P., and R. H. P.,

v.

F. P., D. S., E. P., P. P., S. B. and M.
his wife, late M. P., J. C., N. J., P.
N., and R. B. N., infant children of
S. N., deceased, by R. E., their
guardian ad litem.

This cause having this day been regularly brought to a hearing upon the bill filed for the partition of certain lands, the bill of revivor and supplement

Recital of
pleadings.

Of reports.

Adjudication
of rights and
interests.

also filed, and the answer of D. S. the answer of S. B. and M. his wife, the answer of T. P. thereto, and upon the answer of E. P. and P. P., who were then infants by their guardian ad litem, but who have since attained lawful age, and have filed a written consent to abide by the same answer, and to ratify and confirm the several proceedings had and taken in said cause, and also upon the answer of the infant defendants, I. C. N. jun., P. N., and R. B. N., by their guardian ad litem submitting their rights to the court, and upon the report of T. A. E., one of the masters of this court, bearing date the day of 1835, as to the rights, titles, and interests of the parties in the premises, and other matters, and which report has been duly confirmed; and also upon another report of such master, dated the day of 1835, as to the general and specific liens upon the premises in question, or any part thereof, or any undivided interest or share therein, and which report has been also duly confirmed, (a) by which first mentioned report of the said master, it appears among other things, that all the material matters contained in the said bill, and bill of revivor and supplement, are true as therein stated, that the rights and interests of the parties are as hereinafter declared, and that the premises for a partition whereof the suit is brought, are for the reasons in the said report mentioned, so circumstanced that a partition thereof cannot be made without great prejudice to the owners thereof; and by which second above mentioned report, it appears that there is no general lien or incumbrance by judgment or decree on the undivided share or interest of any of the said parties, but that there are several specific liens by mortgage which are particularly set forth in the said second report, with the respective amounts due thereon; and on hearing M. H., Esq., of counsel for said complainants, and D. S. for himself, and J. L. for the defendants S. B. and M. his wife, and S. M., for the defendants F. P., E. P., and P. P., and R. E., Esq., the guardian appointed by the court to take charge of the interests of the said infant defendants, J. C. N. jun., P. N., and R. B. N., it is ordered, adjudged, and decreed, and the vice-chancellor of the first circuit, by virtue of the authority in this court vested, doth order, adjudge, declare and decree, that the parties to this suit are seised of and entitled to the lands, tenements, and hereditaments, in the amended bill of complaint, in this cause described and referred to in the bill of revivor and supplement, with the appurtenances, as tenants in common thereof in fee simple, and that the respective rights and interests of the parties, complainants and defendants therein, are, and they are hereby ascertained, adjudged, and declared to be as follows, to wit: that the complainant T. P., is seised of and well entitled to the one equal undivided seventh part of the said premises, subject however to the dower right of the said F. P., widow as aforesaid; that the complainant C. C. P., is seised of and well entitled to the one equal undivided seventh part of the said premises, subject to the dower right of the said F. P., widow as aforesaid; that the complainant R. H. P., is seised of and well entitled to the one equal undivided seventh part of the said premises, subject to the dower right of the said F. P., widow as aforesaid; that the defendant E. P., is seised of and

(a) Ante, p. 43, note.

well entitled to the one equal undivided seventh part of the said premises, subject to the dower right of said F. P., widow as aforesaid; that the defendant, P. P., is seised of and well entitled to the one equal undivided seventh part of said premises, subject to the dower right of said F. P., widow as aforesaid; that the defendants, S. B. and M. his wife, in right of said M., are seised of and well entitled to the one equal undivided seventh part of said premises, subject to the dower right of said F. P., widow as aforesaid; that the defendants, J. C. N., jun., P. N., and R. B. N., are seised of and well entitled to the remaining one equal undivided seventh part of the said premises, subject however to the dower right of the said F. P., widow as aforesaid; that is to say, they, the said J. C. N., jun., P. N. and R. B. N., are each seised of and well entitled to the one equal third of the one equal undivided seventh part of said premises, subject to the right of dower as aforesaid. And it is further ordered and decreed, that all and singular the said premises mentioned in the said amended bill of complaint, and therein described as follows, (*take in description of premises,*) together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, be sold at public auction, in the presence and under the direction of one of the masters of this court, residing in the said city and county of New-York, that the same be sold separately and in such portions as to the master may seem most for the interest of the parties interested therein; that the said master give six weeks previous notice of the time and place of sale, in one of the public newspapers printed in the city and county of New-York, where the said premises are situated, and in such other manner as is required by law and the rules and practice of this court; and that the complainants, or any of the parties in this cause, may become the purchaser or purchasers of such premises, or any part thereof; that the said master forthwith, after such sale, make a report thereof to this court; and after this decree has been enrolled, and his report of sale has been duly confirmed, then that he execute a deed or deeds of the said premises to the purchaser or purchasers at such sale, on their complying with the conditions on which the deed was to be delivered; and that such sale or conveyance, or conveyances be valid and effectual for ever. And it is further ordered, that the said master, after such enrolment and confirmation as aforesaid, retain his fees, commissions and disbursements on said sale out of the proceeds thereof, and specify the same in his report of proceedings subsequent to the said sale hereafter mentioned, and pay to the complainants, or their solicitors, and to the guardian ad litem of the said infant defendants, and to the other defendants, out of the proceeds of said sale, their respective costs of this suit to be taxed; that such master do also pay and discharge out of the proceeds, all taxes, charges, and assessments which may be a lien upon such premises, or any part thereof, and if the same are upon a part only, then that such master pay the same out of the proceeds of such part, and so specify it in his final report to be made, that such master pay to the Globe Insurance Company, the amount reported due to them upon their specific lien on the whole of such premises, with interest, that the said master ascertain and report whether the defendant, F. P., is willing to accept in lieu and instead of her estate in dower in the said premises, a sum in gross in satisfaction thereof out of the nett proceeds of the

That sale
be made.

Directions
to master.

Master to
report.

Distribu-
tion pro-
ceeds.

Specific lien.

Compensa-
tion in lieu
of dower.

said premises, and what on the principles applicable to annuities, would be a reasonable satisfaction for her said estate; and if said F. P. consents to accept such gross sum, that the said master pay the same to her upon the said F. P.'s executing, acknowledging and delivering to said master a release, to be approved by said master, of all her rights, and claim of and for an estate in dower, of and in the said premises and every part thereof. But if the said F. P. shall refuse to accept a gross sum in lieu of her dower, it is then further ordered, that the said master, after paying said costs and disbursements, taxes and assessments as aforesaid, and after paying the amount reported due to the said Globe Insurance Company, as stated in such report, he pay one third of the residue of said proceeds into this court, to be invested by the clerk of this court for her benefit, and the interest or dividends thereon, or to accrue thereon, to be paid over to her during her natural life. And it is further ordered and decreed, that the said master divide the residue of the proceeds of said premises into seven equal parts, and that he bring into this court and deposit with the said clerk, one of the said equal seventh parts of said residue, being for the shares of the infant defendants, J. C. N., jun., P. N. and R. B. N. And it is further ordered, that the said master pay to the defendant, P. P., one of the said equal seventh parts of said residue of said proceeds; that the said master out of one other of the equal seventh parts of said residue of said proceeds, (being the share of said residue of said S. B. and M. his wife, in right of said M.,) pay the amount reported due upon the several bonds secured by mortgage on the undivided share or interest of the said S. B. and M. his wife, as reported by said master in his said second report, with interest thereon, to the several persons or parties who are legally authorized to receive the same and give satisfaction therefor; and that the said master bring into this court, and deposit with the clerk the balance of said share. That the said master out of one other of the equal seventh part of said residue of said proceeds, (being the share of the complainant the said F. P.,) pay the several bonds secured by mortgages, on the undivided share or interest of the said F. P., as reported by said master in his said second report, to the several persons or parties who are legally authorized to receive the same and give satisfaction therefor, and that he pay over to said F. P. the balance of said share. That the said master, out of one other of the equal seventh part of said residue of said proceeds, (being the share of the complainant, R. H. P.,) pay the several bonds secured by mortgage on the undivided share or interest of the said R. H. P., as reported by said master in his said report, to the several persons or parties who are legally authorized to receive the same and give satisfaction therefor, and

Provision
if compensa-
tion not ac-
cepted.

Division of
residue.

Infants
share.(a)

Married wo-
men's share.

Incum-
brances.

Balance of
this share
into court.(b)

(a) See the clauses as to infants, *post*.

(b) See as to married women, *post*.

that he pay over to said R. H. P. the balance of said share. That the said master, out of the remaining equal seventh part of said residue of said proceeds, (being the share of the defendant E. P.,) pay the several bonds secured by mortgage on the undivided share or interests of the said E. P., as reported by said master in his said second report, to the said several persons or parties who are legally authorized to receive the same and give satisfaction therefor, and that he pay over to said E. P., the balance of said share, and that he take receipts for such payments, and file them, with a report of all the proceedings subsequent to the confirmation of his report of sale. And it is further ordered, that such title deeds and writings as may be in the possession or under the control of any of the parties, and as appear to relate solely to any particular part of the said premises, be delivered up to any person or persons who may on such sale become the purchaser or purchasers thereof, and that all other title deeds and writings may be deposited with the clerk of this court for safe custody if required, by any of the parties interested therein, there to remain for the benefit of all persons interested therein, and that the purchaser or purchasers of the same premises at such sale be let into the possession thereof, and that any of the parties in this cause who may be in possession of the said premises, or any part thereof, and any person who since the commencement of this suit has come into possession of them, or either or any of them, deliver possession thereof to such purchaser or purchasers on production of the master's deed for such premises. And it is further ordered, that the said master make a report to this court, of all he shall do under and by virtue of this decree, subsequent to the confirmation of his report of sale so to be made as aforesaid, with all convenient speed.

Final report.

As to title deeds.

ANOTHER DECREE.

(Title.)

At, &c.

This cause having been brought on to be heard on the complainants' bill, taken as confessed by P. B., E. McG., and J. McG., and G. R., A. W., and J. S., upon the general answer of the guardian ad litem for the infant defendants, M. C. B., J. K. B., A. B. and S. B., and on the report of J. R., one of the masters of this court, made in this cause, and the papers included in and making a part of said report, which report bears date the 19th day of January, 1839, and after hearing Mr. T., of counsel for complainants, and Mr. R., of counsel for the defendant R., it is ordered, that said report be, and the same is hereby approved, ratified and confirmed; and it is further ordered, adjudged, declared, determined and decreed, and this court by virtue of the power and authority therein vested, doth order, adjudge, declare, determine and decree, that the parties to this suit are seised of and entitled to the lands, tenements and hereditaments in the bill of complaint in this cause mentioned and hereinafter described, with the appurtenances as tenants in common thereof in fee simple; and that the respective rights and interests of the said parties, complainants and defendants therein, are such as are ascertained and stated by the said master in his report aforesaid, that is to say, the parcel of said premises containing twenty-five acres is held as follows:—The complainants, L. C. and D. his wife, in right of said D., are seised in fee simple as tenants in common with said L. C., in his own right, and with the defend-

ants, P. B., J. McG., and E. his wife, in right of said E., M. C. B., J. K. B., A. B., and S. B., and well entitled to eleven equal undivided twenty-fourth parts ($\frac{11}{24}$) of said lot; the complainant L. C., is seised in fee in his own right as tenant in common as aforesaid, of four other equal undivided twenty-fourth parts ($\frac{4}{24}$) of said lot; the defendant P. B., is seised in fee in her own right as tenant in common as aforesaid, of four equal undivided twenty-fourth ($\frac{4}{24}$) parts of said lot; the defendants, J. McG. and E. his wife, in right of said E., are seised in fee as tenants in common as aforesaid, of one equal undivided twenty-fourth ($\frac{1}{24}$) part of said lot; and the defendants, M. C. B., J. K. B., A. B., and S. B., in their own rights, respectively, are each seised in fee as tenants in common as aforesaid, of one equal undivided twenty-fourth ($\frac{1}{24}$) part of said lot. The interest of said complainants in said premises is incumbered by a mortgage to the defendant, A. W., on which there was due at the date of said report the sum of \$477 89, which mortgage is also a lien upon ten acres of land lying south of said twenty-five acres above referred to.

The parcel of said premises, known as the tavern stand, is held and owned as follows:—The defendant G. R., in his own right, is seised in fee as tenant in common with said defendants, J. McG. and E. his wife, in right of said E., M. C. B., J. K. B., A. B., and S. B., of nineteen equal undivided twenty-fourth ($\frac{19}{24}$) part of said premises; the said J. McG. and E. his wife, in right of said E., are seised in fee as tenants in common as aforesaid, of one equal undivided twenty-fourth ($\frac{1}{24}$) part of said premises; and that the defendants, M. C. B., J. K. B., A. B., and S. B., are respectively seised in fee as tenants in common as aforesaid, each in his or her own right, of one equal undivided twenty-fourth ($\frac{1}{24}$) part of said premises.

And it is further ordered and decreed, that all and singular the premises mentioned in the said bill of complaint, and therein described as follows:—
 “All that certain piece or parcel of land, situate, lying and being in the town of New-Baltimore, county of Greene, bounded on the east by the Hudson river, on the south by lands owned, or lately owned by S. M. P., on the west by J. R. and sons, and on the north by land now or lately of J., G., and H. R., and containing in the whole twenty-five acres of land, be the same more or less. Also all that other lot lying in the village of New-Baltimore, occupied as a tavern stand, and bounded on the east by the Albany and Greene County Turnpike road, on the north by a highway or street called by some Washington-street, on the west by a lot of land owned and occupied by W. M., and on the south by H. C. H., the same being about one hundred and fifty feet in length, and sixty breadth,” together with all and singular the hereditaments and appurtenances thereto belonging or in any wise appertaining, be sold at public auction, in the city of Albany, by one of the masters of this court. That the said two parcels be sold separately; that the said master give six weeks’ previous notice of the time and place of the sale, in one of the public newspapers printed in the county of Greene, where the said premises are located, and in such other manner as is required by law and the rules and practice of the court. That the master be at liberty to receive such an amount down on the sale, and give such credit for the balance, taking such security for the payment of

the same as he may think proper, and as may be consistent with the provisions and directions herein contained. And that the complainants, or any of the parties in this cause, may become the purchaser or purchasers. That the master forthwith after such sale make report thereof; and after this decree shall have been enrolled, and his report of sale shall have been duly confirmed, then that he execute a deed or deeds of the said premises to the purchaser or purchasers at the said sale, on their complying with the conditions upon which the deeds were to be delivered, and that such sale, and conveyance or conveyances, be valid and effectual for ever.

And it is further ordered, that the costs of all parties of this suit to be taxed, be first apportioned between the said two parcels rateably, and paid out of the proceeds of the sale of both pieces or parcels of land, in proportion to the sums for which they respectively sell, the same to be paid to the solicitor for the complainants, and to the guardian ad litem of the infants defendants, and to the solicitor for said G. R. And that the master, in like manner, retain out of the proceeds of the sale of each the fees to which he is entitled on such sale, the same to be retained rateably out of the proceeds of each piece or parcel of land.

Costs.

And it is further ordered, that the nett proceeds of the sale of the piece or parcel of land, first above described, after the payment of its proportional share of costs and fees as aforesaid, be divided by the master into twenty-four equal parts, and that out of twelve of those parts bring the four parts belonging to said complainants, in right of said D. C., the four parts belonging to L. C., in his own right, and the four parts belonging to said defendant, P. B., as grantees of A. V., in said report mentioned said master pay to said G. R., if the same shall be sufficient for the purpose, a sum equal to $\frac{1}{4}$ of the proceeds of said tavern stand, and equal to $\frac{1}{4}$ of the costs and expenses of this suit, which shall be apportioned to and charged upon the proceeds of the sale of said tavern stand, provided said proceeds do not exceed the original purchase money and interest thereon, to wit, the sum of five hundred dollars, and interest thereon, from the thirteenth day of June, in the year one thousand eight hundred and thirty-two; and if said proceeds do exceed the same, then up to but not exceeding the amount of said principal and interest; and if there shall be any residue of said $\frac{1}{4}$ after such payment, then that said master pay $\frac{1}{3}$ of such residue to said P. B.; that said master, in the next place, out of the remaining proceeds of said sale of said twenty-five acre lot belonging to said complainants, pay to said defendant, A. W., said sum of \$477 89, with interest thereon from the date of said master's report; and if any further residue of said proceeds remains after such payments, belonging to said complainants, that the same be paid by such master to the complainants, L. C., provided said D. C. shall consent to such payment being made to her said husband, and shall duly acknowledge such consent before the said master; but in case such consent on the part of the said wife is not so acknowledged to the satisfaction of the said master, then that he bring such money into court, and deposite the same, to be retained by the register, until an application be made by or on the behalf of such wife to the court, for a settlement of the same on her, or until the further order of the court in the premises. That one twenty-fourth of said nett proceeds be paid by said master to J. McG.,

Distribution
of proceeds
of 25 acre
lot.R.'s equity
was par-
amount to
W.'s and W.
had addi-
tional land in
his mort-
gage.

provided said E. McG. shall consent to such payment being made to her said husband, and shall duly acknowledge such consent before the said master; but in case such consent on the part of the said wife is not so acknowledged to the satisfaction of the said master, that then he bring such money into court, and deposite the same, to be retained by the register, until an application be made by or on behalf of such wife to the court, for a settlement of the same on her, or until the further order of the court in the premises.

And that said master bring into this court, and deposite with the register, subject to the future order of the court, the remaining four of the said twenty-four parts, the same belonging to M. C. B., J. K. B., A. B. and S. B., infants, each of said infants being entitled to one of said twenty-fourth parts.

And it is further ordered, that the nett proceeds of the sale of the piece or parcel of land secondly above described, after the payment of its proportional share of costs and fees of the master as aforesaid, be in like manner divided by the said master into twenty-four equal parts, and that nineteen of those twenty-four parts be paid by the said master to G. R., one of the above defendants. That one twenty-fourth of said nett proceeds be paid by said master to said J. McG., provided said E. McG. shall consent to such payment being made to her said husband, and shall duly acknowledge such consent before the said master; but in case such consent on the part of the said wife is not so given and acknowledged to the satisfaction of the said master, that then he bring such money into court, and deposite the same, to be retained by the register, until an application be made by or on behalf of such wife to the court for a settlement of the same on her, or until the further order of the court in the premises. And that said master bring into this court, and deposite with the register, subject to the future order of the court, the remaining four of the said twenty-four parts, the same belonging to M. C. B., J. K. B., A. B. and S. B., infants, each of said infants being entitled to one of said twenty-fourth parts. And that the said master take receipts for all such payments, and file them with his report to be made of his proceedings subsequent to the confirmation of his report of sale. And it is further ordered, that such title deeds and writings, as may be in the possession or under the control of any one of the parties, and as appear to relate solely to any particular part of the said premises, be delivered up to any person or persons who may on such sale become the purchaser or purchasers thereof; and that all other title deeds or writings may be deposited with the register for safe custody, there to remain for the benefit of all persons interested therein; and that the purchaser or purchasers of both said premises at such sale, be let into the possession thereof, and that any of the parties in this cause who may be in possession of said premises, or any part thereof; and any person who since the commencement of this suit, has come into possession of them, or either or any of them, deliver possession thereof to such purchaser or purchasers, on production of the master's deed for such premises.

And it is further ordered, that the said master make a report to this court, of all he shall do under and by virtue of this decree, subsequent to the confirmation of his report of sale, to be made as aforesaid with all convenient speed.

CLAUSES RELATING TO A DOWRESS OR TENANT FOR LIFE.

And the said defendant, J. D., widow of M. D., deceased, by her counsel, declining to accept a sum in gross in lieu of her dower right and estate, in and to the equal fifth part of such premises, it is thereupon ordered and decreed, that such master do ascertain and report the amount of the one third part of the one fifth part of the proceeds of such premises, after deducting all expenses, which it is declared is a just and reasonable sum to be invested for the benefit of the said J. D., entitled to such estate and right of dower as aforesaid; and that such master do bring such amount into court, and pay the same to the assistant register thereof; and further, that such assistant register do invest the said amount in bond and mortgage, or other permanent securities at interest, and do pay such interest to the said J. D., during her natural life.⁽¹⁾

Refusing to take a sum in gross.

And the said defendant, J. D., widow of M. D., deceased, having consented to accept in lieu of her right of dower and estate, in the one fifth part of such premises, such sum in gross as shall be deemed a reasonable satisfaction for such right of dower and estate, which consent has been given, and proven by an instrument under seal, duly acknowledged in the manner that deeds are required to be proved to entitle them to be recorded, (and is annexed to the master's report filed in this cause,) or [now filed with the register of this court,] thereupon, it is ordered and decreed, that the said master do ascertain what sum in gross of the proceeds of such sales, after deducting all expenses, will be upon the principles of life annuities a reasonable satisfaction for such estate, or right of dower in the one fifth part of such premises; and the said master shall pay over to the said J. D., widow as aforesaid, the amount so ascertained by him.

Agreeing to take the sum in gross.

And it is further ordered and decreed, that the said master ascertain whether J. D., the widow of M. D., deceased, is willing to accept in lieu of her estate in dower in such premises, a sum in gross in satisfaction thereof, out of the nett proceeds of such premises; and if she shall so agree to accept a compensation therefor, then that such master ascertain how much, on the principles of annuities, would be a reasonable compensation for such right and estate, and that the said master pay to the said J. D., such amount upon receiving from her a release, to be approved of by such master of all her right and claim of and for an estate for dower in the said premises, and every part thereof.

Provision if consent is afterwards given.

CLAUSES RESPECTING A MARRIED WOMAN.

And it appearing that the defendant, S. J., wife of the defendant H. J., is an infant under the age of twenty-one years, and is entitled only to an inchoate right of dower in the one seventh part of such premises, it is further ordered and decreed, that the master ascertain, upon the principles of

Where the wife is an infant with an inchoate right of dower.

(1) § 53, and sub. 1; § 54, and § 66.

annuities, what is the probable value of her contingent right of dower; (a) that such amount be deducted from the seventh part of the proceeds of such sale, after deducting the proper proportion of the costs and expenses to be borne by such seventh part, and be paid into the hands of the assistant register of this court, to be by him invested in the Trust Company or a Savings' Bank, so that the same may accumulate during the joint lives of the said D. J. and S. J., and upon the death of either, application may be made to this court for the same, by any person or persons entitled thereto.

(Or,) it is further ordered and decreed, that the said seventh part of such proceeds be paid over to the said D. J., upon his giving security to the assistant register, to be approved of by him that the interest or income of the one third of such proceeds shall be paid to the said J. S., after his death, during the term of her natural life, in case she survives him, the said D. J. (b)

And it is further ordered and decreed, that said master bring into this court, and pay to the assistant register thereof, the equal fifth part of such

Where a wife refuses her consent to payment to husband.

(a) The chancellor refers to McKean and Henry's Tables, (see 7 Paige, 409,) which are probably not easily accessible. In New-York, the gentlemen of the Trust Company, will readily furnish the requisite information from tables in their office. There is a set of tables printed in Mathews' Practical Guide to Executors. Law Library. Philad. edit. Vol. 9, p. 137, 138. These may, with a little calculation, serve the purpose. For example, if a wife is 50 years of age and the husband 60, and the 1-3 of the interest, which if the husband were dead, would be given her, is \$240.

By Table I. (p. 137,) we find the value of 100*l.* per annum, at 50 years, is 1126*l.*; (I omit the shillings). And by Table II. (p. 148,) the one life being 60, and the other 50, the value for their joint lives is 698*l.* The difference 428*l.* But by comparing these tables with the annuity table printed in the Book of Rules, (No. 19, p. 174,) and also with the tables published by Mr. Watts, deduced from observations at Northampton, and giving the values at 3 per cent., and up to 8 per cent. I have ascertained that the interest allowed in these tables in Mr. Matthews' work, is 4 per cent. Thus, in the present instance, the value at 50 years, according to the Northampton tables at 4 per cent., is 11264 on 1*l.*, and 9.417, at 6 per cent., of course is 1126*l.*, and 941 on 100*l.*, as it is in the table in the Rule Book. Then, reducing the difference 428*l.* by a simple equation to 6 per cent. interest, the result is 357.69, or say \$3.576 on \$1.

To restate the process briefly:

Value of \$1. A's life, (the wife 50 years old,) - - - -	11.26
Value of joint lives, A. and B. - - - -	6.98
Difference,	4.28

11.26 at 4 per cent. is 9.41 at 6 per cent.

Equation 11.26: 941 :: 4.28 = 3.57.

Thus the rate per dollars is arrived at for these ages. Multiply this into the 1-3 of the interest \$240, the result is \$856.80.

While preparing these statements, I submitted the question to Mr. Bard of the Trust Company, as follows: A. is aged 50, B. 60. What is the value of an annuity of \$100, payable to A., if A. outlives B. Interest 6 per cent. ? The answer which Mr. Bard favored me with, is \$350.40. The above result is \$357. For practical purposes, therefore, I am satisfied that these tables may be pursued, with the correction suggested.

(b) The chancellor has not stated what security would be admissible. It may be suggested, whether any thing should be allowed but a mortgage on public stocks.

purchase money, after deducting the proper proportion of the costs and expenses, as and for the share of the defendants, J. D. and M. his wife, in right of the said M.; that such assistant register invest the same in public stocks, or other permanent securities, and pay the interest or income thereof as the same accrues to the said J. D., the husband of the said M., until the further order of the court.(a)

And it is further ordered and decreed, that before payment be made of the share of J. B. and L. B. his wife, in right of said L. B., of the proceeds of such premises, the said L. B., be examined apart from her husband, before the said master, as to her consent to the payment of such last mentioned share to the said J. B., her husband; that such master explain fully to her the nature and extent of her rights and interests in the premises; and if she consent voluntarily to such payment to her said husband, that he take such consent in writing, and endorse thereupon a certificate of his examination of the said wife as herein directed, and annex the same to his report.

Where a wife is expected to consent to payment to her husband

CLAUSES AS TO INFANTS.

See the two precedents, *ante* p. 314 and 318. And in general, the shares of infants are decreed to be brought into court, and application is made for payment.

No. 283, Vol. II.—Page 191.

ORDER WHERE GUARDIAN HAD PURCHASED.

At a Court of Chancery, held for the state of New-York, at the city of New-York, on the 31st day of March, 1835.

Present : REUBEN H. WALWORTH, *Chancellor.*

M. H., &c.
v.
A. O. and S. H. P., an infant, by M. H., her guardian ad litem, &c.

On reading and filing the petition of M. H., guardian ad litem of the above named infant, duly verified, with admission of service and consent that the same be presented by the solicitors of all the parties who appeared in this

(a) In the form, (p. 317,) the direction is that the money be paid in, with liberty for the wife to apply for a settlement. I see no objection, in general cases, to decree the payment of the interest to the husband, as he would be entitled to the rents, leaving the wife, or some one on her behalf, to apply on special grounds.

cause, and who by the decree therein are declared entitled to any interest in the premises in question, and also a consent signed by W. C. W., solicitor for C. B., the purchaser therein named, and on motion of the said M. H., it is ordered and declared, that the purchase made by such guardian, under the decretal order in this cause, on the 18th day of September, in the year 1834, was a purchase for the benefit or in behalf of the said infant, and that the master amend his report of the sale accordingly by an amendment of the original report on file; and it is further ordered, that the former order of this court, confirming the original report of the sale be vacated, and that the deed executed by the master who conducted such sale to the said M. H., in pursuance of that order, be delivered up to be cancelled and be deemed null and void, and that such amended report of the sale be confirmed, and that the master execute and deliver another deed for such premises directly to the said infant, in pursuance of the said purchase by her guardian ad litem, in her behalf, with a power in trust to be inserted therein, authorizing the said M. H., the guardian ad litem, to sell and dispose of the premises for the benefit of such infant, and to raise the necessary funds to complete the said purchase, reporting such sale to this court. And it is further ordered, that if it shall be deemed advisable, the said infant, if of proper age, or her next friend or general guardian, may apply to this court for a sale of her interest in such premises, under the provisions of the statute respecting the sale and disposition of the real estate of infants, or conveyance to be made thereunder, in conjunction with the deed to be executed by the said M. H., upon the sale mentioned in such partition, or upon any other sale which may be made by him, giving notice of such application to the guardian ad litem aforesaid in this suit, which conveyance to the said infant is declared to be subject to the equitable claim of the guardian ad litem upon the premises so purchased for and in behalf of such infant, for the moneys advanced, or to be advanced, by him for the shares of the purchase money belonging to other parties in this cause, and for the costs payable under the decree.

(Copy.)

JOHN WALWORTH, *Assistant Register.*

 No. 284, Vol. II.—Page 194.

REPORT OF SALE IN PARTITION.

In Chancery.

L. C. and D. C.

v.

P. B., E. McG., J. W. McG.,
 G. R., M. C. E., J. K. B., A.
 B., S. B., A. W., and J. S.

To the Chancellor of the State of New-York:

In pursuance and in virtue of a decretal order of this court, made in the above cause by the chancellor, and bearing date the sixth day of March, in the

year one thousand eight hundred and thirty-nine, by which it was, among other things, ordered, adjudged and decreed, that all and singular the premises mentioned in the bill of complaint in this cause, and hereinafter described, be sold at public auction, by or under the direction of one of the masters of this court; that the said sale be made in the city of Albany; that the master give public notice of the time and place of such sale, according to the course and practice of this court, and that the complainants, or any of the parties in this cause, might become the purchaser; that the master, after his report of sale was confirmed and said decree enrolled, execute a deed to the purchaser of the premises on the said sale: I, the subscriber, one of the masters of this court residing in the city of Albany, do respectfully certify and report, that having been charged by the solicitor for the complainants with the execution of said decretal order, I advertised said premises to be sold by me at the Mansion House, in North Market-street, in the city of Albany, on the fourth day of May, in the year one thousand eight hundred and thirty-nine; that previous to said sale, I caused notice thereof to be publicly advertised for six weeks successively, as follows, viz: by causing a printed notice thereof to be fastened up, in three public places in the city where such premises were to be sold, and in the town of New-Baltimore, Greene county, where they are situated, and by causing a copy of such notice to be printed once in each week during the six weeks immediately preceding said sale, in a public newspaper printed in said county of Greene, and in another paper printed in the city of Albany, which notices contained a brief description of the said premises.

And I do further report, that on said fourth day of May, in the year one thousand eight hundred and thirty-nine, the day on which the said premises were so advertised to be sold as aforesaid, I attended at the time and place fixed for said sale, and exposed said premises for sale, at public auction, to the highest bidder, and the said premises were then and there fairly struck off as follows: the twenty-five acre lot in said decree mentioned, to L. W. L., for ten hundred and fifty dollars, and the tavern stand in said decree mentioned to G. R., one of the defendants, for four hundred and fifty dollars, they being the highest bidders therefor respectively, and those being the highest sums bidden for the same.

And I further report, that the premises so sold by me as aforesaid, were described as follows, to wit: *All, &c.*

No. 286, Vol. II.—Page 198.

MASTER'S DEED IN PARTITION.

This indenture, made the day of in the year one thousand eight hundred and thirty between one of the masters in chancery in and for the state of New-York, dwelling in the of

the first part, and of the second part: whereas, at a court of chancery held for the state of New-York, at on the day of in the year one thousand eight hundred and thirty before it was, among other things, ordered, adjudged and decreed, by the said court, in a certain cause then depending in the said court, between defendants, that all and singular, the premises, mentioned and set forth, or referred to in the bill of complaint in the said cause, (or so much thereof as are hereinafter particularly described,) be sold by or under the direction of one of the masters of the said court, at public auction, in the county where the said premises, are situated; that the said master first give public notice, of the time and place of such sale, with a brief description of the said premises, according to the course and practice of said court. And whereas, I, the said master in chancery, and party of the first part to these presents, in pursuance of the order and decree of the said court of chancery, did, on the day of the date of these presents, sell at public auction, at the said premises hereinafter particularly described, having first given public notice of the time and place of such sale, with a brief description of the said premises, agreeable to the order aforesaid; at which sale the said premises were struck off to the said party of the second part to these presents, for the sum of dollars, that being the highest sum bidden for the same. Now therefore this indenture witnesseth, that I, the said master in chancery as aforesaid, and party of the first part to these presents, in order to carry into effect the said sale so made as aforesaid, in pursuance of the decree of the said court of chancery; and also by virtue of the statute in such case made and provided, and in consideration of the premises, and of the sum of dollars, paid by the said party of the second part to these presents to me the said master in chancery as aforesaid, the receipt whereof I do hereby acknowledge, have granted, bargained and sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain and sell, alien, release, convey and confirm, unto the said party of the second part, and to heirs and assigns, for ever, all

together with all and singular the rights, titles, privileges, members, hereditaments and appurtenances to the same belonging, or in any wise appertaining. To have and to hold all and singular the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, unto the said party of the second part, heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, heirs and assigns, for ever.

In witness whereof, I, the said master in chancery, have hereunto set my hand and seal, the day and year first above written.

*Sealed and delivered }
in the presence of }*

Master in Chancery.

State of New-York, ss.

On this day of in the year one thousand eight hundred and thirty before me the subscriber, appeared master in chancery, who acknowledged that he executed the within instrument: And I certify that I know the person who made the said acknowledgment, to be the individual described in, and who executed the said instrument.

No. 287, Vol. II.—Page 195.

FINAL REPORT OF DISTRIBUTION, &c.

In Chancery.

[Title.]

To the Chancellor of the State of New-York:

In pursuance and in virtue of a decretal order of this court, made in the above cause, by the chancellor, and bearing date the sixth day of March, in the year one thousand eight hundred and thirty-nine, by which it was, among other things, ordered, adjudged and decreed, that all and singular the premises mentioned in the bill of complaint in this cause, and hereinafter described, be sold at public auction, by or under the direction of one of the masters of this court; that the said sale be made in the city of Albany; that the master give public notice of the time and place of such sale, according to the course and practice of this court, and that the complainants, or any of the parties in this cause, might become the purchaser; that after the report of sale was confirmed by the special order of the court, and said decree enrolled, the master execute deeds to the purchasers of the said premises on the said sale; and that the costs of all parties of this suit to be taxed, be first apportioned between the said two parcels rateably and paid out of the proceeds of sale of both pieces or parcels of land in proportion to the sums for which they respectively sell, and that the costs and expense of said sale be in like manner apportioned and retained rateably out of the proceeds of each piece or parcel of land. That the nett proceeds of the twenty-five acre lot, after deducting its proportion of the costs of said suit and sale, be divided by said master into twenty-four equal parts, and that out of twelve of those parts, to wit, four of the parts belonging to said complainants in right of said D. C. as grantee of A. P. V.; four parts belonging to said L. C. in his own right as such grantee; and the four parts belonging to the defendant, P. B., as such grantee, said master pay to the defendant, G. R., a sum equal to $\frac{2}{3}$ of the proceeds of said tavern stand and equal to $\frac{1}{3}$ of the costs and expenses of this suit and sale, which shall be apportioned to and charged upon the proceeds of said tavern stand, provided said proceeds do not exceed the sum of five hundred dollars with interest thereon from the 13th of June, 1832; and if there shall be any residue of said $\frac{1}{3}$ after such payment, then that said master pay $\frac{1}{2}$ of such residue of said $\frac{1}{3}$ part to the defendant, P. B.; and that ou

of the remaining $\frac{3}{4}$ of such residue, and out of the $\frac{1}{4}$ of said proceeds which belongs to said complainant in right of said D. as devisee of J. K. B., and heir at law of H. B., that said master pay to said defendant, A. P., the sum of \$477 89, with interest thereon from the 19th day of January, 1839, to the time of such payment; and if any further residue of said proceeds remains, that the same be paid by said master to the complainants, provided said D. C. shall consent to such payment being made to her husband and shall duly acknowledge such consent before said master; but if such consent is not so given and acknowledged, then that he bring such money into court and deposite the same, to be retained until the further order of this court. That $\frac{1}{4}$ of the nett proceeds of said 25 acre lot be paid to the defendant, J. McG., provided the defendant, E. McG., his wife, sign and acknowledge a like consent, and if not then, that he bring the said $\frac{1}{4}$ part into court to abide its further order; and that said master bring into this court and deposite with the register thereof the remaining $\frac{3}{4}$ of said proceeds of said lot, being the shares of the defendants M. C. B., J. K. B., A. B., and S. B., who are infants, then in each of said infants being entitled to one of said twenty-fourth parts. And that the nett proceeds of the sale of the tavern stand, in said decree mentioned, be in like manner divided by said master into twenty-four equal parts, and that he pay over to G. R., one of said defendants, nineteen of said twenty-fourth parts; that he pay one of said twenty-fourth parts to the defendant, J. McG., provided said E. McG., his wife, signs and acknowledges the consent above mentioned, but if not, then that he deposite the same as above mentioned; and that he bring into court and deposite with the register the remaining $\frac{1}{4}$ parts of said proceeds, the same belonging to said M. C. B., J. K. B., A. B. and S. B., infants, one part to each. And that the master take receipts for the amount so paid, and file the same with his report, to be made of his proceedings subsequent to his report of sale: I, the subscriber, one of the masters of this court, residing in the city of Albany, do respectfully certify and report, that having heretofore reported said sale, and said report having been confirmed and the said decree having been duly enrolled, I have executed, acknowledged and delivered to said purchasers the usual master's deeds for said premises so purchased by them, and have paid over or disposed of the purchase moneys, or proceeds of said sale, as follows, viz: I have paid to the solicitor for the complainant the sum of \$175 10, being the amount of his costs of this suit as taxed, and have taken a receipt therefor which is hereto annexed. I have paid to the counsel for the defendant, R. \$18 92, being the amount of his costs of this suit as taxed. I have paid to the guardian ad litem of the infant defendants, \$29 95, being the amount of his costs of this suit as taxed, and I have also retained in my hands the sum of \$69 78, being the amount of my fees, commissions, and disbursements on said sale, as will appear by reference to the statement of the items thereof annexed to this my report, and to which I refer. And I have paid to the defendant, G. R., the sum of \$163 48, being the amount directed to be paid by me out of the $\frac{1}{4}$ of the proceeds of said 25 acre lot, which the complainants and the defendant P. B. were entitled to as the grantees of said A. V., and have taken a receipt

therefor, which is hereto annexed. The residue of the proceeds of the sale of both of said lots and parcels of said premises, I have paid over to the parties and into court for the purposes and in the manner specified in schedule A. to this my report annexed, and to which and the receipts and certificates therefor, hereto annexed, I refer. Dated May 22, 1839.

All which is respectfully submitted.

Schedule A. referred to in the preceding Report.

Distribution of proceeds of sale.

Proceeds of 25 acre lot,	1050 00
" " Tavern stand,	450 00
Costs of suit, complainants,	175 10
defendant, R.,	18 92
guardian ad litem,	29 95
Costs of sale,	69 78
Apportionment,	\$293 75
If \$1500 gives \$293.75, what will \$450 give? Ans.	86 12
And what does \$1050 give?	Ans. 205 63
Proceeds of 25 acre lot,	1050 00
Deduct its proportion of costs,	205 63
Residue to be divided into 24 parts,	844 37
One 24th of \$844.37 is,	35 18 -
$\frac{12}{24}$ of \$844.37 is,	422 18
$\frac{1}{24}$ of \$450 is,	\$18 75
$\frac{12}{24}$ of \$450, proceeds of tavern stand is,	\$23 75
$\frac{1}{24}$ of \$86.12 is,	69 73
Sum to be paid G. R., out of	163 48
Complainants' and P. B.'s share of 25 acre lot, as grantees of A. V.,	163 48
Residue of said $\frac{12}{24}$	258 70
$\frac{1}{2}$ of which is to be paid to defendant, P. B.,	86 23
Balance belongs to complainants,	\$172 47
Also, $\frac{1}{24}$ of \$844.37 as devisees of J. K. B., and heir at law of H. B., equal to,	246 26
To be paid to defendant W., on account of his mortgage,	\$418 73

Amount reported due on said mortgage,

January 19, 1839,	\$477 89	
Interest to 22d May, 1839, 4 months 3 days,	11 42	\$489 31
Deduct above sum belonging to complainants,	418 73	

Balance due on W.'s mortgage, 70 58

Residue of said \$844.37 to be disposed of as follows,

viz: $\frac{1}{4}$ to J. W. McG. and E. his wife, in right of said E.,	35 18	
$\frac{1}{4}$ to M. C. B., who is now of age,	35 18	
$\frac{1}{4}$ to register, for use of J. K., A., and S. B.,	105 54	

Recapitulation of disposition of proceeds of the 25 acre lot,

Paid its proportion of costs of suit,	205 63	\$1050 00
Paid G. R. $\frac{5}{4}$ of proceeds of tavern stand, and $\frac{1}{4}$ of costs apportioned in proceeds of tavern stand,	163 48	
Paid P. B.,	86 23	
Paid W., on account of his mortgage,	418 73	
" McG., and wife,	35 18	
" M. C. B., who is now of age,	35 18	
" Register, for J. K. B.,	35 18	
" " " A. B.,	35 18	
" " " S. B.,	35 18	
	1049 97	

Fractions, 03 \$1050 00

Proceeds of tavern stand, 450 00

Its proportion of costs of suit and sale, 88 12

Residue to be divided into 24 parts, \$361 88 361 88

One of which is, \$15 08

$\frac{1}{24}$ to G. R., is, 286 52

$\frac{1}{24}$ " McG. and wife, 15 08

$\frac{1}{24}$ " M. C. B., 15 08

$\frac{1}{24}$ " Register, for J. K. B., 15 08

$\frac{1}{24}$ " " " A. B., 15 08

$\frac{1}{24}$ " " " S. B., 15 08

\$361 92

Deduct fractions, 04 361 88

Albany, May 22, 1839.

No. 287 A, Vol II.—Page 195.

*In Chancery.**Before the Chancellor.*

G. R. and C. his wife, &c. }
 v.
 J. R. and H. his wife, &c. }

Whereas, by a certain decree of the court of chancery of the state of New-York, made and entered in the above entitled cause, and bearing date on the fourth day of June, in the year one thousand eight hundred and thirty-four, it was, among other things, ordered and adjudged, that the above named
 and his wife, in right of the
 said are entitled to the equal one part of the
 proceeds of the sale of the premises specified in the said decree, and therein and thereby ordered to be sold; and that before the payments of the shares of said proceeds, in which any parties to this cause being feme coverts may be interested, the said feme coverts shall be examined apart from their husbands before the said master, as to their consent to the payment of such last mentioned shares to their said husbands: Now, therefore, in consideration of the premises, I, the said wife of the said
 and one of the parties in this cause, do hereby consent, voluntarily, that the payment of the said share, so directed to be paid as aforesaid, in which I am interested, and all my claim and title in and to the moneys arising from the proceeds of the said sale, be paid by the master by whom the aforesaid sale was conducted, unto my husband, the said
 Dated at in the county of on this day of
 in the year one thousand eight hundred and thirty

*In Chancery.**Before the Chancellor.*

G. R. and C. his wife, &c. }
 v.
 J. R. and H. his wife, &c. }

I, J. R., a master in chancery, residing in the city and county of Albany, do hereby certify, that on the day of in the year one thousand eight hundred and thirty before me came A. B., to me [proved to me, &c.] or known to be the wife of C. B., one of the in the above entitled cause, and the same person who is described in, and who executed the foregoing consent; and the said being by me examined separate and apart from her said husband, acknowledged to me that she executed the foregoing consent freely and voluntarily, and without the fear, threat or compulsion of her said husband; and before taking such acknowledgment, I fully explained to her the nature and extent of her rights, in the proceeds of said premises.

Dated at in the county of on the day of
 in the year one thousand eight hundred and thirty-four.

No. 268, Vol. II.—Page 198.

DECREE FOR ACTUAL PARTITION.

*In Chancery.**Before the Chancellor.*

M. H., L. M. H., M. H., C. R. G. and
S. his wife, R. L., and A. M. his
wife, M. S. H., M. R., formerly H.,
M. H., and C. H., H. H., C. C. H.,
and J. F. H., infants under the age
of 21 years, suing by M. H., their
next friend, and M. F. H., widow
of M. H., deceased,

v.

A. S. G., E. B. G., and H. McL., A.
H., E. A., wife of J. A., C. F., W.
G., R. I. G., C. M., wife of J. S., and
J. W. G., S. F. L., M. L., P. H. L.,
and N. T. L., children of F. S. and
N. B. L., G. O., S. F. L. O., and
I. O.

Decree in partition.

At a Court of Chancery, held for the state of
New-York, at the city of New-York, on
the day of in the year one
thousand eight hundred and thirty-six.

Present:

REUBEN H. WALWORTH, *Chancellor.*

This cause coming on to be heard upon the report of S. C., esquire, one of the masters of this court, dated the 21st day of May, in the year one thousand eight hundred and thirty-five, made pursuant to an order of reference in this cause, dated the twenty-sixth day of April, one thousand eight hundred and thirty-one, and which report has been duly confirmed: Thereupon, on hearing such report read, and reading a consent of the solicitors of the several defendants who have appeared, that this cause be brought to a hearing on any day of the present term. And on motion of M. H., one of the complainants in person, it is decreed, adjudged and declared, and this court by virtue of its power and authority, and of the statute in such case made and provided, doth decree, adjudge and declare, that the rights, interests and estates of the several parties to this suit in the lots, parcel of land, premises and contracts in the pleadings in this cause mentioned, are as follows, to wit:

That the complainants, the children and heirs at law of M. H., deceased, are together seised of and well entitled to the one equal undivided fourth part of all and singular the tract and parcel of land, premises and contracts, and moneys due thereon, mentioned and set forth in the pleadings whereof partition is sought; that is to say, the said M. H. in and to the one equal undi-

1
Adjudica-
tion of in-
terests.

vided twelfth part of one equal undivided fourth part of such premises and moneys; the said L. M. H., in and to the like estate and interest; the said M. H., in and to the like estate and interest; the said A. R. L. and A. M., his wife, in right of the said A. M., in and to the like interest and estate; the said C. R. G. and S. his wife, in right of the said S., to the like interest and estate; the said W. R. and M. his wife, in right of the said M., to the like interest and estate; the said M. S. H., to a like interest and estate; the said M. H., in and to a like interest and estate; the said C. H., in and to a like interest and estate; the said H. H., in and to a like interest and estate; the said C. G. H., in and to a like interest and estate; and the said J. F. H., in and to a like interest and estate; such interests and estates being subject to the dower right of M. F. H., widow of M. H., in and to the same.

That the said complainant, M. F. H., is entitled to an estate in dower in and to the said equal undivided fourth part of such premises as remain unsold as of the endowment of her husband, the said M. H.

And it is further adjudged, declared and decreed, that the defendants, A. S. G., E. B. G., and H. McL., are each severally entitled to the one equal undivided fourth part of one fourth part of such premises and the proceeds of such contracts, and that the defendants, A. H., E. A., wife of J. A., C. F., W. G., R. J. G., C. M., wife of J. S., and J. W. G., are each entitled to the one equal undivided twenty-eighth part of one fourth part of such premises and the said proceeds.

That the defendants, S. F. L., M. L., P. H. L., and N. T. L., children of F. S. L. and N. B. L., are each entitled to the one equal undivided fourth part of the said premises and proceeds.

That the defendant, G. O., is seised and well entitled to one equal undivided sixth part of the said premises and proceeds. And that the said S. F. L. O., is seised of and entitled to the one equal undivided sixth part of such premises and proceeds, subject to a certain agreement between her and the said I. O., to convey and assign her share to him, and to her consent set forth in her answer in this cause, that the said share should be so conveyed and assigned.

And it further appearing by the pleadings in this cause, that the defendant, G. O., was the legally appointed agent and attorney for the sale and disposition of the lands in question in this cause, and as such agent and attorney made sale and disposition of various parcels thereof, and received the proceeds or part of the proceeds of such sale; it is therefore ordered and decreed, that it be referred to S. C., one of the masters of this court, to take and state an account of the sums of money received by the said G. O., or by any person by or with his authority and consent, upon or from any contracts entered into for the sale of such premises or any part thereof, or in any other manner derived from such premises. And such master shall also inquire and report whether any other of the parties to this suit have received any monies arising from such premises, and made any advances in and about the same, and the amount of such receipts and advances, if any; and that he make report with all convenient speed.

And it is further ordered, that a copy of such report, when confirmed, be delivered to the commissioners to make partition hereafter named.

3
Reference
to take an
account of
sums received
by a party.

3
Clause that
partition be
made.

And it is further ordered, adjudged, and decreed, that partition be made among the several parties aforesaid of the aforesaid pieces and parcels of land, contracts, and proceeds, agreeably to their respective rights and interests therein as above adjudged, so that the complainants and defendants in this suit may respectively have and hold in severalty such parts and portions of the said premises, contracts, and proceeds, as shall be allotted or assigned to them respectively upon such partition.

4
Commissioners
appointed.

And further, that W. H. H., F. B. C. and H. O., three reputable freeholders, be and they are hereby appointed commissioners for the purpose of making such partition. And that a commission issue to them out of and under the seal of this court for such purpose. That such commissioners, before proceeding to the execution of their duty, shall severally be sworn or affirmed honestly and impartially to execute the trust reposed in them, and to make partition as directed by this court, which oath shall be taken before any person authorized to take affidavits, and shall be filed with the assistant register at or before the coming in of their report hereafter directed to be made. And that such commissioners make a full and ample report of their proceedings to this court under their hands, or under the hands of any two of them, specifying the manner of executing such commission, describing the lands divided, and the shares allotted to each party, with the quantity, courses and distances, of each share, and the items of their charges in the premises; that such commissioners, or such two of them, as shall sign such report, do acknowledge or cause the same to be proven before some officer authorized to take proof of deeds, in the same manner as deeds are proven or acknowledged in order to be recorded; and that such report be filed in the office of the

5
Report to
be made.

6
May employ survey-
ors.

assistant register of this court. And such commissioners are hereby authorized to employ a surveyor, and to cause all necessary maps and surveys to be made. And they may examine all witnesses upon oath to be administered, or otherwise as they shall see fit—taking their depositions in writing, and return the same to this court. And all parties in this cause shall produce to and leave with them for such time as such commissioners shall deem reasonable, all deeds, writings, surveys, or maps, relating to the said premises, or any part thereof.

7
May call
for deeds,
maps, &c.

8
Division of
contracts
and monies.

And further it is ordered, that such commissioners do ascertain the premises and contracts and proceeds to be partitioned and assigned from the pleadings in this cause, and from the report of the master herein directed to be made. And it is further ordered and decreed, that such commissioners, in making such division and allotment, have regard to the amounts which shall be ascertained by the master aforesaid to have been received by either of the parties in this cause out of such premises, or which shall have been disbursed or expended by either of such parties in or about the same, so as to equalize the shares to be allotted to each of the several parties.

9
Compensation
for
equality.

And it is further ordered and decreed, that in case partition cannot be made equal between such parties without prejudice to the rights and interests of some of them, unless compensation be made by one or more of the said parties to the other or others of them for equality of partition in the premises, that then and in such case, they the said commissioners, or such two of them as may make the said partition, ascertain what compensation ought to be

made by such one or more of the parties respectively, who ought to make the same to such one or more of the said parties respectively, to whom the same ought to be made for equality of partition, according to the justice and equity of the case; and allot and award such compensation to be made accordingly; and that in their said report and return they certify and declare the compensation or compensations, or sum or sums of money they may ascertain and award to be made by and to the parties respectively, and by whom the same shall be made, and to whom the same shall be awarded.

ANOTHER DECREE FOR ACTUAL PARTITION.

In Chancery.

Before the Chancellor.

A. W. C.
v.
J. C. W., O. C., S. A. C.,
and others. }

At, &c.

This cause coming on to be heard upon the report of D. C., one of the masters of this court, dated the day of last past, whereby it was found and reported, that the premises in question in this cause could not be partitioned among the parties entitled, without great prejudice to their interests, and that a sale thereof was necessary, and also finding that the complainant was seised of and entitled to one third part, and the one half of one third part of such premises, and the defendant, J. C., was seised of and entitled to one third part, and the one half part of a third part in such premises; and also upon exceptions taken to such report as well on the part of the complainant as of the said J. C.: Thereupon, on motion of E. S., of counsel for the guardian ad litem of such infant defendant J. S., and hearing Mr. J. L. S., of counsel for the complainant, it is ordered, adjudged and decreed, and this court, by virtue of the power and authority therein vested, pursuant to the statute in such case made and provided, doth order, adjudge and decree, that the said report of D. C., Esq., hereinbefore referred to and in part recited, be, and the same is hereby fully ratified and confirmed except in that part thereof which relates to a sale of the said premises, and except also as to that part thereof which relates to the interest of the said defendants W. O. C. and J. C.

Confirmation of report except as shares of two defendants.

And this court by virtue and in pursuance of the power and authority aforesaid, doth further adjudge, decree and declare, that the rights, interests and estates of the several parties to this suit, in and to the several lots, pieces or parcels of land and premises described in the bill of complaint in this, and herein before set forth, are as follows, that is to say, that the complainant A. W. C. is seised in fee and well entitled to two equal undivided third parts of the said lands and premises set forth in the pleadings in this cause, whereof partition is sought; that the said complainant A. W. C. is seised in fee simple in his own right as a devisee under and by virtue of the last

Adjudication of rights.

will and testament of his father, I. C., late of the city of New-York, deceased, of one of the said two equal undivided third parts of the said lands and premises, and that the said complainant, A. W. C., is seised in fee simple in right of his brother the said I. S. C. of the other of the said two equal undivided third parts of the said lands and premises, by virtue of the conveyance made thereof by the said I. S. C. to E. L., and the several conveyances thereof, from the said L. down to the said complainant A. W. C., in the said bill of complaint and masters report particularly mentioned; and that the said defendant J. C. is seised in fee simple in her own right, and is lawfully entitled to one other equal undivided third part of the said lands and premises described in the said bill of complaint, and herein before set forth, under and by virtue of said last will and testament of her grandfather, I. C., in the said bill of complaint set forth, and that the said several other defendants in this suit have no rights or interests whatever in the premises.

Decree for
partition.

And it is further ordered, adjudged and decreed, that partition be made of the lands and premises described in the pleadings in this cause, and herein before set forth among the said parties according to their respective rights and interests therein, as the same has been thus ascertained by this court and established by this decree; and further, that E. H., J. H. and C. D., three reputable freeholders of the county of Westchester, be and they are hereby appointed commissioners, for the purpose of making such partition. That the said commissioners before proceeding to the execution of their duties, shall severally be sworn or affirmed before any officer authorized by law to take affidavits, honestly and partially to execute the trust reposed in them, and to make partition as directed by this court, and that the said oaths or affirmations shall be filed with the assistant register of this court, at or before the coming in of the report of the said commissioners hereinafter directed to be made; and that the said commissioners shall divide the said lands and premises in the bill of complaint mentioned and herein before described, into three equal parts, quality and quantity relatively considered, and thereupon they shall allot to the complainant, A. W. C., two of the said equal third parts of the said lands and premises into which the whole of the said lands and premises are to be divided as aforesaid, to be held and enjoyed by him in severalty, according to his rights and interests therein so adjudged and decreed as aforesaid, and shall designate the parts or portions so allotted to the said A. W. C., and the boundaries thereof by sufficient descriptions and monuments. And that the said commissioners shall also thereupon allot to the defendant J. C., the other of the said equal undivided third parts into which the whole of the said lands and premises are to be divided as aforesaid, to be held and enjoyed by her in severalty, according to her rights and interests therein so adjudged and decreed as aforesaid, and shall designate the part and portion so allotted to her, the said J. C., and the boundaries thereof, by a sufficient description and monuments. And that the said commissioners make a full and ample report of the proceedings in this behalf, under their hands, or under the hands of any two of them, specifying therein the manner of executing this decree and describing the lands divided and the parts or shares allotted to each party, with the quantity, courses and distances of each share, and a description of the posts, stones, or other monuments thereof, and

the items of their charges in the premises. That the said commissioners, or such two of them as shall sign the said report, do acknowledge the said report, or cause the same to be proven in the same manner that deeds are required to be acknowledged or proven, to entitle them to be recorded before some officer authorized to take the proof or acknowledgment of deeds, and that such report be filed in the office of the assistant register of this court. That all the said commissioners meet together in the performance of any of their duties under this decree, and the acts and decisions of a majority of the said commissioners when so met, shall be valid. And the said commissioners are hereby authorized to employ a surveyor, and cause all necessary maps and surveys to be made. And all the parties in this cause shall produce to and leave with the said commissioners for such time as such commissioners shall deem reasonable, all deeds, writings, surveys or maps, relating to the said premises, or any part thereof.

And it is further ordered, adjudged and decreed, that in case partition of such premises cannot be made with perfect equality between the said parties, according to their respective rights and interests therein, unless compensation be made by one of the said parties to the other of them, for equality of partition, that then and in such case the said commissioners, or such two of them as may make the said partition, ascertain and report the proper compensation, which ought to be paid for equality of partition, and by which of the parties the same should be paid, and to which the same ought to be allowed.

But the said commissioners shall not report compensation to be paid by an infant for equality of partition, unless it satisfactorily appears to them that he pay sufficient personal estate to pay the same, and his share of the costs and expenses of the partition, and all other liens on his share of the premises; except in cases where, from the situation of the property and of the interest of the parties, it cannot be charged upon the share of an adult.

No. 289, Vol. II.—Page 200.

COMMISSION IN PARTITION.

The People of the State of New-York, to T. B., of the city of New-York,
President of the Phoenix Fire Insurance Company, M. H., of the
[L. s.] same city, counsellor at law, and G. B. S., of the same city, city
surveyor—Greeting:

Whereas, at our court of chancery held for the state of New-York, before our vice-chancellor of the first circuit, at the city of New-York, on the fifth day of November, in the year one thousand eight hundred and thirty-two, a decretal order was made by the said court in a certain cause depending in the said court, wherein H. K., J. Y. V. T., and C. his wife, are complainants, and S. K. K., T. S. G., and A. L. G. his wife, M. W. K., E. K., daughter of J. S. K., deceased, S. K., J. B. M. and M. his wife, W. L. K., S. E. K., E.

K., daughter of E. K. the elder, late of the city of New-York, deceased, G. J. K., and A. K., which said W. L. K., S. E. K., E. K., daughter of the said E. K., deceased, G. J. K., and A. K., are the surviving children of the said E. K., deceased, having survived their brother E. K., formerly a defendant in this suit who hath lately departed this life, M. K., widow of the first above-named E. K., deceased, S. J., S. K., W. R., and M. his wife, C. S. K., J. O. and M. his wife, late M. K., one of the daughters of C. K., deceased, E. K., another daughter of the said C. K., deceased, C. K., son of the said C. K., deceased, H. A. and M. S., and some person or persons unknown to the complainants, are defendants. By which said decretal order, it is, among other things, ordered, adjudged and decreed, that a partition of the lands, tenements and hereditaments mentioned and described in the original bill of complaint in the said cause, and of which partition is sought thereby, and also mentioned and described in the said decretal order, with the appurtenances, be made between the above named H. K., J. Y. V. T. and C. his wife, S. K. K., T. S. G. and A. L. G. his wife, M. W. K., E. K., daughter of J. S. K., deceased, S. K., J. B. M., and M. his wife, S. E. K., E. K., daughter of E. K., the elder, deceased, G. J. K., A. K., M. K., widow of the said E. K., the elder, deceased, S. J., S. K., W. R. and M. his wife, C. S. K., J. O. and M. his wife, E. K., daughter of C. K., deceased, C. K., and a certain person or persons who now is or are entitled to an estate for the life of the said J. B. M., of and in one undivided eighth part or seven undivided fifty-sixth parts of the said lands, tenements and hereditaments, to which life estate the said J. B. M. was heretofore entitled, which said person or persons are the unknown person or persons mentioned or referred to in the bill of complaint in this cause, according to their respective rights therein and thereto, as was adjudged, declared, determined and decreed, in and by the said decretal order, that is to say, that nine fifty-sixth parts of the said lands, tenements and hereditaments, with the appurtenances, be allotted and assigned to the said H. K. and his heirs in severalty; that nine other fifty-sixth parts thereof be allotted and assigned to the said J. Y. V. T. and C. his wife, and the heirs of the said C. in severalty, &c. [*Reciting the decree as to rights.*]

And by which said decretal order it was further ordered, adjudged, and decreed, that in case the said partition cannot be made equal between the said parties without prejudice to the rights and interests of some of them, then and in such case compensation be made by one or more of the said parties to the other or others of them for equality of partition, according to the equity of the case; and forasmuch as in and by the said decretal order it is further ordered, that a commission do issue out of and under the seal of the said court to you to be directed, authorizing and directing you to act in the premises: Now, therefore, know ye, that, confiding in your prudence and discretion, we have assigned and appointed you, the said T. B., M. H., and G. B. S., commissioners, and do give you, or any two of you, full power and authority to make partition of the said lands, tenements, and hereditaments, herein abovementioned, and hereinafter set forth and described, with the appurtenances, among and between the said H. K., J. Y. V. T. and C. his wife, S. K. K., T. S. G. and A. L. G. his wife, M. W. K., E. K., daughter of J. S. K., deceased, S. K., J. B. M. and M. his wife, S. E. K., E. K., daughter of E. K. the elder, deceased,

G. J. K., A. K., M. K., widow of the said E. K: the elder, deceased, S. J., S. K., W. R. and M. his wife, C. S. K., J. O. and M. his wife, E. K., daughter of C. K., deceased, C. K., and the unknown person or persons mentioned or referred to in the said bill of complaint according to their respective rights and interests therein as the same have been ascertained, declared, determined, and adjudged, as aforesaid, and that you the said commissioners or such two of you as may make the said partition, make report under your hands to our said court of chancery of your proceedings in the matter without unnecessary delay; and we do by these presents further authorize, direct and require you or such two of you as may make the said partition, that in case the same cannot be made equal between the said parties without prejudice to the rights and interests of some of them, unless compensation be made by one or more of the said parties to the other or others of them for equality of partition in the premises, that then and in such case you or such two of you as may make the said partition, ascertain what compensation or compensations ought to be made by such one or more of the said parties respectively, who ought to make the same to such one or more of the said parties respectively, to whom the same ought to be made for equality of partition, according to the equity of the case, and that you or such two of you as may make the said partition, allot and award such said compensation or compensations to be made accordingly; and that in your said report and return you certify and declare the compensation or compensations, or sum or sums of money, you or such two of you as may make the said partition may ascertain, allot, and award to be made by and to the parties respectively, and by whom the same shall be made, and to whom the same shall be so awarded. And we do hereby further order and direct that you or such two of you as shall act in the premises by virtue of the said decretal order, and of this commission, do for the better understanding and more clear elucidation of your acts in and about the partition aforesaid, annex to and return with this commission, or file or record in the office of the register of the city and county of New-York, a map of the whole of the said premises, showing clearly and distinctly the division which you shall make of the premises in lots, and marking each of the said lots by numbers, from number one, and so on progressively, so that each lot may have a distinct number, and the better to enable you to make the partition and perform the duties hereinbefore directed, you and each of you are and is hereby authorized and empowered to enter into and upon and view the said premises and every or any part thereof, together with such surveyors and assistants as you may deem necessary; and to survey the same, or cause the same to be surveyed, for the purposes aforesaid. You, the said T. B., M. H., and G. R. S., and the persons employed by you in this behalf, acting in all and singular the premises with all prudence, and according to justice and equity; which said lands, tenements, and hereditaments, of which you are hereby directed to make partition, are described, butted and bounded as follows, that is to say, *First, all that, &c.*

Witness, Reuben H. Walworth, Esquire, our chancellor of the State of New-York, this fifteenth day of November, one thousand eight hundred and thirty-two.

JOHN WALWORTH, *Clerk.*

D. S. Jones, *Sol.*

No. 290, Vol. II.—Page 201.

OATH OF COMMISSIONERS.

(Title.)

State of New-York,
City and County of New-York, } ss.

M. H., W. H. H., and D. E., all of the city of New-York, being duly and severally sworn, say : and first, the said M. H. for himself saith, that he will honestly and impartially execute the trust reposed in him, and will make partition of the premises in question in this cause, as directed by this court. And the said W. H. H., for himself, saith, &c.

No. 291, Vol. II.—Page 203.

REPORT OF COMMISSIONERS IN PARTITION.

In Chancery.

Before the Chancellor.

A. W. C. }

v. }

W. O. C., J. C., and others. }

To the Chancellor of the State of New-York.

We, E. F., J. H. and C. D., commissioners appointed in and by a decretal order of the court of chancery of the state of New-York, made in the above entitled cause, on the first day of August, in the year one thousand eight hundred and thirty-eight, to make partition and division of certain lands, tenements and hereditaments, in the pleadings and proceedings in the said cause, and in the said decretal order mentioned and described, do hereby report to this court, that having taken upon ourselves the execution of the duties imposed upon us by the said decretal order, we took and subscribed the affirmation and oaths hereto annexed, pursuant to the directions in the said decretal order contained. That we did deliberately examine all the lands, tenements and hereditaments, mentioned and described in the said decretal order, belonging to the said testator, I. C., in the said decretal order named, and did by virtue of the power to us in and by the said decretal order given, employ a surveyor, and cause all necessary maps and surveys to be made, to enable us to perform the duties imposed upon us by the said decretal order. That we did, by virtue of the power, and pursuant to the directions in the said decretal order given to us, and according to the true intent of the said decretal order, proceed to make, and did make partition of all the said lands and real estate, in the said decretal order mentioned and described in manner following, that is to say :

We divided the said lands and premises in the bill of complaint mentioned,

and in the said decree particularly described, into three equal parts, quality and quantity relatively considered, which we have designated on the map made by the surveyor employed by us for that purpose, and signed by us respectively, as division A, division B, and division C, respectively, containing as is hereinafter particularly set forth, being in our judgment and opinion the most equitable and beneficial division, due regard being had to the quantity, quality, local situation and improvements thereof, and of the several parts thereof, and to the interests of the owners thereof, that could be made of the same.

One of which divisions or allotments, that is to say, the allotment hereinafter first mentioned and described part and parcel of the said lands and premises whereof we were directed to make partition as aforesaid, designated on the map aforesaid as division A, contains the lots, pieces and parcels of ground which are thereunder laid down on said map, and by the survey made of the same under our direction, contains, and is bounded and described as follows: that is to say, (*here insert description,*) together with the rights, members, easements, hereditaments and appurtenances thereof and thereto belonging and hereinafter declared, subject to all such leases and demises as have been heretofore lawfully made of any part or parcels thereof, being quantity and quality relatively considered, and regard being had to the compensation to be paid and deducted therefrom, for equality of partition as hereinafter directed and awarded, one full equal third part of the said lands and premises whereof we have made partition as aforesaid, we did set apart, allot, and assign to the said J. C., as and for the part and share of the said J. C. of the said premises whereof we have made partition as aforesaid, according to the right and interest of the said J. C. therein, as the same hath been ascertained and determined by the said court, and by the decretal order aforesaid.

And we do further certify and report, that one other of the said allotments into which the said lands and premises were so divided by us as aforesaid, that is to say, the allotment hereinafter next mentioned and described parcel of said lands and premises, and distinguished by us on the map made under our direction as aforesaid as division B, contains and is bounded and may be described as follows: that is to say, (*here insert description,*) together with the rights, members easements, hereditaments and appurtenances thereof and thereto belonging, subject to all such leases and demises as have been heretofore lawfully made of any part or parcel thereof, being (quantity and quality relatively considered, and regard being had to the compensation to be made and added thereto, and paid therewith, for equality of partition as hereinafter directed and awarded,) one full equal third part of the said premises whereof we have made partition as aforesaid, we did set apart, allot, and assign to the said A. W. C., as and for the part and share of the said A. W. C. in the said premises, whereof we have made partition as aforesaid, according to the right of the said A. W. C. in the said lands and premises, whereof we have made partition as aforesaid, as the same hath been ascertained and determined by the said court, and by the decretal order aforesaid.

And we do further certify and report, that the other of the said allotments into which the said lands and premises were so divided by us aforesaid, that

is to say, the allotment hereinafter next mentioned and described parcel of said lands and premises, and distinguished by us on the map made under our direction as aforesaid, as division C, contains, and is bounded, and may be described as follows, that is to say (*description.*) Together with the rights, members, easements, hereditaments, and appurtenances thereof and thereto belonging, and hereinafter declared subject to all such leases and demises as have been heretofore lawfully made of any part or parcels thereof, being quality and quantity relatively considered, and regard being had to the compensation, and to be made and added thereto and paid therewith, for equality of partition as hereinafter directed and awarded, one full equal third part of the said premises whereof we have made partition as aforesaid, we did set apart, allot, and assign to the said A. W. C. as and for the part and share of the said A. W. C. in the said premises, whereof we have made partition as aforesaid, according to the right of the said A. W. C. in the said lands and premises as the same hath been ascertained and determined by the said court and by the decretal order aforesaid.

And we, the said commissioners, do further certify and report, that in making the said partition, as the same could not otherwise be made equal between the parties without prejudice to their rights and interests, for the purpose of equalizing the same, being thereto authorized as aforesaid, did ascertain the compensation and sums to be made and paid by the parties respectively to whom compensation ought to be made, in regard to the difference of the value of the several parts or allotments into which the said premises were so divided as aforesaid for equality of partition, according to the nature and equity of the case, and did allot, direct, and award the same to be paid as follows, that is to say, we did ascertain the compensation which ought to be made by the said J. C., the party to whom the said allotment division A of the said premises whereof the division was so made as aforesaid, was so allotted as aforesaid for equality of partition in the premises, to be one hundred and ninety dollars, lawful money of the United States of America; and we did allot and award the said sum of one hundred and ninety dollars to be paid by the said J. C. for equality of partition in the premises accordingly, and did award and direct the same to be paid by the said J. C. to the parties and in the proportions as follows, that is to say, part and parcel, that is to say, ninety-five dollars thereof to be paid to the said A. W. C., to whom the foresaid allotment division B of said premises, was allotted as aforesaid in full of the compensation to be made in the premises to that share of the said premises, and the residue to wit: the sum of ninety-five dollars to be paid to the said A. W. C., to whom the aforesaid allotment division C of the same premises was allotted as aforesaid, in full of the compensation to be made to that share of the said premises.

And we do hereby certify and report, that in making partition of the said lands and premises and the allotments thereof, hereinafter set forth, we did determine and adjudge, and do hereby award, order, and direct, that the party to whom the said allotment division A was allotted and awarded by us; and the heirs and assigns of such party shall have a perpetual right of way and easement over the road or lane leading from the turnpike which bounds the northerly side of the said Clason farm, as far as the white gate; and we do

also award, order, and direct, that the party to whom the said allotment division B was allotted and awarded by us, and the heirs and assigns of such party shall have a perpetual right of way and easement over the road or lane leading from the turnpike which bounds the northerly side of the said Clason farm as far as the north-west boundary of the said division B; and we have determined, and do hereby award and direct, that each of the said divisions made by us as aforesaid and the allotments thereof, shall hereafter pay and defray one third part of the expenses of repairing and keeping in order the said road or lane, to an amount not exceeding ten dollars per annum for each of the said third parts or allotments aforesaid.

And we do hereby certify and declare, that the said hereinbefore described part or allotment of the premises distinguished as division A, allotted and assigned to the said J. C. as aforesaid, and the compensation by us directed to be made and paid for the same, to wit, the sum of ninety-five dollars to each of the divisions B and C as aforesaid, for equality of partition as aforesaid, being paid therefore as by us directed and awarded to be made for the same, and subject to the payment thereof, with the appurtenances relatively considered, the one equal third part of the said premises whereof we were authorized to make partition as aforesaid.

And we do hereby further certify and report, that the said hereinbefore described part or allotment of the said premises, distinguished as division B, allotted and assigned to the said A. W. C. as aforesaid, and the said compensation of ninety-five dollars by us awarded and directed to be made to the same for equality of partition as aforesaid, being added thereto and paid and taken therewith to be quality and quantity, relatively considered the one equal third part of the whole of the said premises whereof we were authorized to make partition as aforesaid.

And we do hereby further certify and report, that the said hereinafter described part or allotment of the said premises distinguished as division C, allotted and assigned to the said A. W. C., together with the said compensation of ninety-five dollars by us directed and awarded to be made and added thereto, and paid and taken therewith for equality of partition as aforesaid to be quality and quantity, relatively considered one equal third part of the whole of the said premises whereof we were authorized to make partition as aforesaid.

And we do hereby further certify and report, that we have ordered and directed the said map of the said lands and premises made under our direction and signed by us as aforesaid, containing the divisions and allotments hereinbefore described, to be filed in the office of the clerk of the county of Westchester, there to be and remain as a public record.

And so we, the said commissioners, have made the said partition of the said premises between the said parties in this cause, according to their respective rights as ascertained and determined by the said court in and by the decretal order aforesaid, as we were thereby authorized by the said court. In witness whereof, we, the said commissioners, have to this our report set our hands, the fourteenth day of November, in the year one thousand eight hundred and thirty-eight.

[Acknowledged as a deed.]

E. F.
J. H.
C. D.

ANOTHER REPORT.

*In Chancery.**Before the Vice-Chancellor.*

W. P.
 v.
 C. S. W., executor of G.
 P., deceased, G. P., W.
 P., jun., J. J. P., S. P.,
 and M. J. P.

To the Chancellor of the State of New-York:

We, the subscribers, commissioners appointed by a decretal order of this honorable court, dated the second day of August, in the year 1837, to make partition of the premises in question in this cause, and whereof partition is sought among the several parties in this cause according to their rights and interests respectively, as the same are ascertained, determined and decreed, in and by such decretal order, do report:

That prior to entering upon the execution of such commission, we severally took an oath before an officer authorized to take an oath to be read in this court, honestly and impartially to execute the trusts reposed in us as such commissioners for making the partition aforesaid, which oath subscribed by us severally we have annexed to this report, to be filed with the clerk of this court, with the same.

And we further report, that we caused all necessary maps and surveys to be furnished us for the purpose of making such partition, and caused also a full and minute estimate and valuation to be made by skillful and competent persons, of the separate value of every lot or parcel of ground whereof partition was to be made, and of every building, erection or improvement thereupon, and also estimated the diminished value of various parcels thereof by reason of leases outstanding, incumbrances by way of dower, or quit rent, and as far as practicable, allotted to each share of such premises a due and aliquot proportion of the premises, subject to liens by way of mortgage. And further, having ascertained that such partition could not be made entirely equal, we have computed the proper sum of money to be allowed and paid by way of pecuniary compensation, by some of the parties, to others thereof, for equality of partition; which sums respectively, and the names of the several parties who are to pay, and who are to receive, will hereafter appear fully and in detail in this report.

And we further report, that we divided such premises in ten equal parcels, as near in value as we could estimate the same, and allowed certain sums of money to be paid and received for equality of partition, and, thereupon, having procured the personal attendance of the complainant, the defendant, C. S. W., and the defendants, W. P., jun., and G. P., lots were drawn for such several portions and allotments in manner following, to wit: That the said complainant first drew, and the allotment No. 6 fell to him; that one of the undersigned commissioners then drew for the infant M. J. P., to whom the allotment No. 7 fell; that the complainant then drew allotment No. 2; W. P., jun., drew in person allotment No. 9; the complainant allotment No. 8; No. five (5) was then drawn on behalf of the infant, S. P.;

No. 1 by the complainant; No. 10 by the defendant G. P. in person; No. three (3) by the complainant; and No. four (4) by one of the commissioners on behalf of the infant defendant J. J. P.

And we further report, that we have allotted and set apart unto the complainant, W. P., the following lots, pieces, and parcels of ground, part of the premises so to be partitioned, together with the messuages, buildings, tenements, hereditaments and appurtenances, to the same belonging as and for his part and portion of such premises, to be had and holden by him in severalty, as of his sole and separate estate, that is to say: *All and singular, &c.*

And we do further report, that we have allotted and set apart as and for the share and proportion of the defendant M. J. P. for her use and enjoyment during her natural life, with remainder in fee to her lawful issue, if she shall have any, and upon her death without leaving lawful issue, then to the heirs at law of the testator who may survive the said M. J. P., and subject to the trusts of the will of such testator, the following pieces and parcels of ground and premises with the messuages, tenements, hereditaments, and appurtenances to the same belonging; to be had and holden in severalty by her and them as of her and their respective separate estates, that is to say: *All, &c.*

And we do further report, that we have allotted and set apart unto the defendant G. P. the following, &c.

And we do further report, that we have allotted and set apart unto the defendant, W. P., jun., the following lots, pieces, and parcels of ground, parcel of the lands decreed to be partitioned, together with the messuages, buildings, tenements, hereditaments and appurtenances to the same belonging, as for his part and portion of such premises; to be had and holden unto him, his heirs and assigns, in severalty, as of his separate estate, subject, however, to the limitations and restrictions in that behalf expressed and declared in the will of the said testator, that is to say: *All, &c.*

And we do further report, that we have allotted and set apart as and for the share and proportion of S. P. for her use and enjoyment during her natural life, with remainder in fee to her lawful issue, if she shall have any, and upon her death without leaving lawful issue, then to the heirs at law of the testator who may survive the said M. J. P., and subject to the trusts of the will of such testator, the following pieces and parcels of ground and premises with the messuages, tenements, hereditaments, and appurtenances to the same belonging; to be had, holden and in severalty by her and them as of her and their respective separate estates, that it is to say: *All, &c.*

And we do further report, that we have allotted and set apart unto the defendant J. J. P. the following, &c.

And we further report, that after such allotments had been made and adopted by us, and prior to the parties drawing therefor, a certain mortgage for the sum of \$500, which formed a lien upon the premises known as No. 9 First-street, was paid off and discharged by the executors out of the personal estate of the testator; that such parcel of ground subject to such mortgage, had been placed in allotment No. four (4), and that we charged such allotment with the said sum of five hundred dollars (\$500), and apportioned the same among the other allotments.

And we further report, that in order to make equality of partition among

the several parties in interest, the following sums of money must be paid or received by the several parties respectively, as hereafter named, that is to say: The complainant, W. P., must pay the sum of two hundred and seventy-five dollars and fifty cents; the defendant J. J. P. must pay the sum of eight hundred and thirty-four dollars twenty-five cents; the defendant M. J. P. must pay the sum of eight hundred and thirty-eight dollars, seventy cents; and the defendant G. P. must pay the sum of sixty-three dollars, seventy cents; and the defendant S. P. must receive the sum of seven hundred and ninety-four dollars eighty cents; and the defendant W. P., jr., must receive the sum of twelve hundred and seventeen dollars, thirty cents.

And we further report, that the interest upon all and every of the bonds and mortgages, forming liens and incumbrances upon the premises, or any part thereof, is to be paid and settled by the executors of the said G. P. deceased, out of his personal estate, down to the first day of May, in the year one thousand eight hundred and thirty-eight.

All which is respectfully submitted. Dated New-York, day of
in the year one thousand eight hundred and thirty-eight.

(Same acknowledgment as to a deed.)

No. 292, Vol. II.—Page 205—208.

FINAL DECREE IN PARTITION.

**At a Court of Chancery, held for the State of
of New-York at the city of Albany on the
fifteenth day of January in the year one
thousand eight hundred and thirty-nine.**

Present : REUBEN H. WALWORTH, *Chancellor.*

A. W. C. }
v. }
J. C. and others. }

On reading and filing the report of E. F., J. H. and C. D., made in pursuance of a decretal order of this court entered in the above cause, on the first day of August, in the year one thousand eight hundred and thirty-eight, appointing them commissioners, and directing and commanding them to make partition of certain lands, tenements, and hereditaments, in the pleadings and proceedings in the said cause, and in the said decretal order mentioned and described, between A. W. C., the complainant, and J. C., one of the defendants, according to their respective rights and interests therein, so that two third parts thereof with the appurtenances be assigned to the said complainant A. W. C., and one third part thereof, with the appurtenances, be assigned to the defendant J. C., as established and directed in and by the said decree; by which said report it satisfactorily appears that the said commissioners have made the partition of the said premises, which in and by the said

decree heretofore made in the above entitled cause, they were authorized and required to make, and that they have allotted and set apart to the said complainant A. W. C., two third parts of the said premises, by metes and bounds as follows, that is to say: the allotment which the said commissioners have designated on the map made by the surveyor employed by the said commissioners for that purpose, and signed by the said commissioners as division B, which contains and is bounded and may be described as follows, that is to say: Beginning, &c.

And also the said allotment which the said commissioners have designated on the map made by the surveyor employed by the said commissioners for that purpose, and signed by the said commissioners as division C, which contains and is bounded and may be described as follows, that is to say: Beginning, &c.

And that the said commissioners have allotted and set apart to the defendant J. C., the remaining one third part of the said premises, which is designated on the map made by the surveyor employed by the said commissioners, and signed by the said commissioners respectively, as division A, and which contains and may be bounded and described as follows, that is to say: Beginning, &c.

By which said report the said commissioners do further certify and report, that in making the said partition, as the same could not otherwise be made equal between the parties without prejudice to their rights and interests, they for the purpose of equalizing the same, being thereunto authorized as aforesaid, did ascertain the compensation and sums to be made and paid by the parties respectively, to whom compensation ought to be made in regard to the difference of the values of the several parts or allotments into which the said premises were so divided as aforesaid, for equality of partition, according to the nature and equity of the case, and did allot and direct, and award the same to be paid as follows, that is to say, they did ascertain the compensation which ought to be made by the said J. C., the party to whom the said allotment division A, of the said premises, whereof the said division was so made as aforesaid, was so allotted as aforesaid for equality of partition in the premises, to be one hundred and ninety dollars, lawful money of the United States of America, and they did allot and award the said sum of one hundred and ninety dollars, to be paid by the said J. C., for equality of partition in the premises accordingly, and did award and direct the same to be paid by the said J. C., to the parties and in the proportions as follows, that is to say part and parcel thereof; that is to say, ninety-five dollars thereof to be paid to the said A. W. C., to whom the foresaid allotment division B, of the said premises was allotted as aforesaid, in full of the compensation to be made in the premises to that share of the said premises, and the residue, to wit, the sum of ninety-five dollars to be paid to the said A. W. C., to whom the aforesaid allotment division C, of the said premises, was allotted as aforesaid, in full of the compensation to be made to that share of said premises.

And by which said report the said commissioners did further certify and report, that in making partition of the said lands and premises, and the allotments thereof therein set forth, they did determine and adjudge, and did thereby award, order and direct, that the party to whom the allotment division

A was allotted and awarded by them, and the heirs and assignees of such party, shall have a perpetual right of way and easement over the road or lane leading from the turnpike, which bounds the northerly side of the said Clason farm, as far as the white gate, and they did also award, order and direct, that the party to whom the said allotment division B was allotted and awarded by them, and the heirs and assignees of such party, shall have a perpetual right of way and easement over the road or lane leading from the turnpike which bounds the northerly side of the said Clason farm, as far as the northwest boundary of said division B. And that the said commissioners had determined, and did thereby award and direct, that each of the said divisions made by them as aforesaid, and the allotments thereof, should thereafter pay and defray one third part of the expenses of repairing and keeping in order the said road or lane, to an amount not exceeding ten dollars per annum, for each of the said third parts or allotments aforesaid.

And that the said commissioners did further certify and declare the said herein before described part or allotment of the said premises, distinguished as division A, allotted and assigned to the said J. C. as aforesaid; and the compensation by them directed to be made and paid for the same, to wit, the sum of ninety-five dollars to each of the divisions B and C as aforesaid, for equality of partition as aforesaid, being paid therefor as by them directed and awarded, to be, with the appurtenances, relatively considered, the one equal third part of the said premises whereof they were authorized to make partition as aforesaid.

And that they did further certify and report, that the said therein before part or allotment of the said premises distinguished as division B, allotted and assigned to the said A. W. C. as aforesaid, and the said compensation of ninety-five dollars, by them awarded and directed to be made to the same for equality of partition as aforesaid, being added thereto, and paid and taken therewith, to be, quality and quantity relatively considered, the one equal third part of the whole of the said premises whereof they were authorized to make partition as aforesaid.

And that they did further certify and report, that the said therein before part or allotment of the said premises distinguished as division C, allotted and assigned to the said A. W. C., together with the said compensation of ninety-five dollars, by them directed and awarded to be made and added thereto, and paid and taken therewith for equality of partition as aforesaid, to be quality and quantity relatively considered, one equal third part of the whole of the said premises whereof they were authorized to make partition as aforesaid. Now, on reading and filing notice of hearing upon the said report, together with an admission of due service thereof signed by the solicitor of the complainant, and on motion of Mr. M. H., guardian ad litem, and of counsel for the defendant J. C., after hearing J. L. G., Esquire, of counsel for the complainant, it is ordered, adjudged and decreed by this court, and his honor the chancellor doth order, adjudge and decree, that the said report be, and the same is hereby confirmed. And hereupon it is ordered, adjudged and decreed, that the said partition so made by the said commissioners of all said lands, tenements, hereditaments and premises, be firm and effectual for ever. And it is hereby further ordered, adjudged and decreed, that the

said herein before described part or allotment of the said premises, distinguished as aforesaid in the said report by allotment B, so set apart, allotted and assigned as aforesaid by the said commissioners to the said A. W. C., the complainant, as one of the said two third parts constituting his share of the said lands, tenements, hereditaments and premises so divided as aforesaid, with the appurtenances, shall be and hereby are vested in him the said A. W. C., in severalty to be had, held and enjoyed by the said A. W. C., his heirs and assigns for ever. And that the herein before described part or allotment of the said premises distinguished as aforesaid in the said report by allotment C, so set apart, allotted and designed as aforesaid by the said commissioners to the said A. W. C., the complainant, as the other of the said two third parts constituting his share of the said lands and premises so divided as aforesaid, with the appurtenances, shall be, and the same are vested in him, the said A. W. C., in severalty to be had, held and enjoyed by the said A. W. C., his heirs and assigns for ever. And that the herein before described part or allotment of the said premises, distinguished as aforesaid in the said report by allotment A, so set apart, allotted and assigned by the said commissioners to the said J. C., for the part and share of her, the said J. C., of and in the said lands, tenements, hereditaments and premises so divided as aforesaid, with the appurtenances, shall be, and are hereby vested in her, the said J. C., in severalty to be had, held and enjoyed by the said J. C., her heirs and assigns for ever.

And it is further ordered, adjudged and decreed, that the said compensation of one hundred and ninety dollars, by the said commissioners ascertained, allotted and awarded to be made by the said J. C. C., to whom the said part or allotment of the said premises distinguished as allotment A as aforesaid, was allotted as aforesaid, be paid by the said J. C. to the said A. W. C., to whom the aforesaid allotments B and C, of the said premises, were allotted as aforesaid, in full of the compensation to be made to him in the premises as aforesaid.

And it is further ordered, adjudged and decreed, that the said J. C., to whom the said allotment division A was allotted and awarded as aforesaid, by the said commissioners and the heirs and assigns of the said J. C., shall have a perpetual right of way and easement on the road or lane leading from the turnpike which bounds the northerly side of the said Clason farm, as far as the white gate.

And it is further ordered, adjudged and decreed, that the said A. W. C., to whom the said allotment division B was allotted and awarded as aforesaid, by the said commissioners and the heirs and assigns of the said A. W. C., shall have a perpetual right of way and easement over the road or lane leading from the turnpike which bounds the northerly side of the said Clason farm, as far as the northwest boundary of the said division.

And it is further ordered, adjudged and decreed, that the respective proprietors to whom the said respective allotments or divisions were adjudged and allotted by the said commissioners as aforesaid, and the heirs and assigns of such parties in and to the said respective parts, divisions or allotments, shall hereafter pay and defray for each of the said divisions or allotments, one third part of the expenses of repairing and keeping in order the said

road or lane, to an amount not exceeding the sum of ten dollars per annum, for each of the said third parts or allotments aforesaid.

Clause as
to costs.

And it is further ordered, adjudged and decreed, that the costs of the complainant and of the two defendants who were infants at the time of the commencement of this suit, be taxed as between party and party, and apportioned between the complainant and the infant defendant J. C., according to their rights and interests in the premises, by the taxing officer, and that the one of the said parties, whose bill of costs and expenses as taxed exceeds the amount of his or her share of the whole costs as aforesaid, have execution against the other for the balance thus due, as ascertained and settled by the taxing officer. And it is further ordered, that so much of the costs of the guardian ad litem of the infant defendants, as are not recovered from the complainant, as a portion of his share of the costs as aforesaid, together with reasonable counsel fees to the guardian ad litem, to be ascertained and settled by the taxing officer, and also the costs and counsel fees of the guardian ad litem, on the appeal to the court for the correction of errors, be paid to the said guardian ad litem, by the general guardian of the infant defendant J. C., out of the rents and profits of her share of the premises, or out of any other funds of the said infant's in the hands of the said general guardian. And that the said general guardian be also authorized to pay out of such rents and profits, or other funds, the amount of costs awarded by the court for the correction of errors, to the respondent on the appeal.(a)

ANOTHER FINAL DECREE.

At a Court of Chancery, held for the state of New-York, at the town of Poughkeepsie, in the county of Dutchess, on the twenty-sixth day of August, one thousand eight hundred and thirty-nine.

Present: CHARLES H. RUGGLES, *Vice Chancellor of the Second Circuit.*

S. F., complainant,

v.

J. G. A., A. A., W. A., S. F. A., J.
A., J. G. G., E. A. G., J. M. G., E.
M. G., S. A. G., P. A. G., J. A., and
J. K., defendants.

This cause coming on to be heard, on the report of S. M., J. N. W., and W. H. H., commissioners heretofore appointed by the decretal order of this court, dated the sixth day of August, in the year one thousand eight hundred and thirty-eight, and for final directions, by which report it appears that the said commissioners, having been first duly sworn honestly and impartially to execute the trust reposed in them, and to make partition as directed by this

(a) See the general form of the order as to costs, *Tibbets v. Tibbets*, 7 *Paige*, 204.

court, had proceeded in virtue of the powers conferred on them by the said decretal order, and another decretal order of this court, made on the twenty-ninth day of April, in the present year, and in pursuance of the directions therein contained, to make partition of the whole of the lands and premises described in the said first mentioned decretal order, by dividing the same into three shares or portions, with special reference to the value of the house and lot of land fronting on Cedar-street, in the first ward of the city of New-York, as charged with the payment of the annuity of three hundred and fifty dollars to the complainant, pursuant to the said second mentioned decretal order; and that they, the said commissioners, having so divided the said premises into three shares or portions, had designated such shares or portions respectively by the letters A, B, C. And in and by the said report it is further stated, that it appeared to the said commissioners, on making said partition, that it could not be made equal between the parties without compensation among them, and that in their judgment the party or parties to whom might be allotted the share or portion of the said lands and premises so designated by the letter C, ought, by way of compensation, to pay to the party or parties to whom might be allotted the share or portion thereof so designated by the letter A, the sum of sixty-six dollars and sixty-six cents; and the party or parties to whom might be allotted the share or portion of the said lands and premises so designated by the letter B, ought, by way of compensation, to pay to the party or parties to whom might be allotted the share or portion thereof so designated by the letter A, the sum of two hundred and sixteen dollars and sixty-seven cents. And in and by the said report it is further stated, that having reference to the compensation above specified, and to the above mentioned charge on the said lot of land fronting on Cedar-street, the several lots and parcels of land composing each of the said several shares or portions of the said lands and premises, quality, quantity, local situation and improvements being relatively considered, constitute one equal third part of the whole of the said lands and premises. And it further appears by the said report, that having so divided the said lands and premises into such three shares or portions, and each of them respectively having been so designated, they, the said commissioners, proceeded in the presence of the counsel of all the parties, and of the guardian ad litem of the infant defendants, to allot the said shares between the said parties by ballot; and on such balloting the share or portion of the said lands and premises so designated by the letter A, had fallen to the lot of the defendants, the children of A. G., deceased, therein and hereinafter severally named; the share or portion thereof so designated by the letter B, to the lot of the defendants, the children of A. A., deceased, therein and hereinafter severally named, and to the defendant, J. A.; and the share or portion thereof so designated by the letter C, to the lot of the complainant; the several lots and parcels of land composing the said shares or portions respectively were thereupon allotted and divided accordingly by the said commissioners to and among the said several parties. And it further appears by the said report, that the lots and parcels of land composing the said share or portion so designated by the letter A, are those next hereinafter described, that is to say: *All those, &c.*

And in and by the said report it is further stated, that the said several lots

of land, so composing the said several shares or portions, are severally further designated and distinguished in the said several maps as follows, to wit: those composing the share or portion thereof so designated by the letter A, and so allotted to the defendants, the children of the said A. G., deceased, by the letter A, and by being delineated in purple coloring; those composing the share or portion thereof so designated by the letter B, and so allotted to the defendants, the children of A. A., deceased, and to the defendant J. A., by the letter B, and by being delineated in orange coloring; and those composing the share or portion thereof so designated by the letter C, and so allotted to the complainant by the letter C, and by being delineated in pink coloring. And in and by the said report it further appears, that the sum of five thousand dollars, specified in the said second mentioned decretal order to be chargeable under the provisions of the will of the testatrix, E. G., deceased, on the share of the estate of the testator, J. G. G., belonging to the defendants, the children of the said A. G., deceased, and required by such decretal order to be paid by them, has not been paid; and that the said commissioners, after the making of the partition and allotment abovementioned, did proceed, in further obedience to the said last mentioned decretal order, to designate and set apart, out of the share and portion of the said land and premises so designated by the letter A, and so allotted to the defendants, the children of the said A. G., deceased, a certain piece or parcel of land specified in the said report, and which, according to its just and fair value, they, the said commissioners, deemed to be equal in amount to the said sum of five thousand dollars, which piece or parcel of land is described in the said report as follows: All that certain lot of land situate in the eighth ward of the city of New-York, consisting of the whole of the lot of land which in the said map marked "Map number one" is designated by the number 7; together with a further narrow strip or piece of land lying and next adjacent thereto, being parcel of the adjoining lot designated on the same map by the number 8, containing in breadth on Prince-street, and also in the rear, one foot, and extending with that breadth southwardly to the rear or southerly line of the same lot; such whole lot number 7, and such piece or parcel of the said adjoining lot number 8, taken together, being bounded and described as follows, viz.: *Beginning, &c.*

Which report, having been read and considered, and counsel being heard thereon, to wit, Mr. R. H. O., on behalf of the complainant, and Mr. J. S., on behalf of the defendants, J. F. A., W. A. and S. F. A., and Mr. S. M., on behalf of J. A., J. G. A. and A. A., it is ordered, adjudged and decreed, and this court, by virtue of the power and authority therein vested, and pursuant to the statute in such case made and provided, doth order, adjudge and decree that the said report be, and the same is hereby confirmed; and that the partition so made by the commissioners of the said lands and premises, as mentioned and set forth in the said report, be firm and effectual, for ever, subject, as to the said piece or parcel of land last above described, to the directions and decree hereinafter contained concerning the same. And it is further ordered, adjudged and decreed, that the said several lots and pieces of land herein and in the said report mentioned to have been allotted by the said commissioners to the defendants, the children of the said A. G., deceased, as their share and portion of the said lands and premises, together with the heredita-

ments and appurtenances thereto severally belonging, saving and excepting thereupon the said last above described piece or parcel of land, be and hereby are allotted and assigned to them, the children of the said A. G., deceased, to wit, the defendants, J. G. G., E. A. G., J. M. G., E. M. G., and S. A. G., and shall be and remain vested in them, as their one third part or share of the lands and premises whereof partition was so directed to be made; to be had, held and enjoyed by them and their heirs and assigns, for ever, as tenants in common, in equal share and proportions. And it is further ordered, adjudged and decreed, that the several lots and pieces of land herein and in the said report mentioned to have been allotted by the said commissioner to the defendants, the children of the said A. A., deceased, and to the defendant J. A., as their share and portion of the said lands and premises, together with the hereditaments and appurtenances thereto severally belonging, be and hereby are allotted and assigned to them, the children of the said A. A., deceased, to wit, the defendants, J. G. A., A. A., W. A., S. F. A. and J. F. A., and to the defendant J. A., and shall be and remain vested in them, as their one third part or share of the lands and premises whereof partition was so directed to be made; to be had, held and enjoyed by them, according to their several estates and interests therein, as declared by the said second mentioned decretal order, that is to say, as to five equal undivided sixth parts thereof, to them, the said J. G. A., A. A., W. A., S. F. A. and J. F. A., their heirs and assigns, for ever, as tenants in common, in equal shares and proportions; and as to the remaining one sixth part thereof, to the defendant, J. A., for and during his natural life, and on his death to them, the said J. G. A., A. A., W. A., S. F. A. and J. F. A., their heirs and assigns, for ever, as tenants in common, in equal shares and proportions. And it is further ordered, adjudged and decreed, that the several lots and pieces of land herein and in the said report mentioned to have been allotted by the said commissioners to the complainant, as her share and portion of the said lands and premises, together with the hereditaments and appurtenances thereto severally belonging, be and hereby are allotted and assigned to the complainant S. F., and shall be and remain vested in her, in severalty, as and for her one third part of the lands and premises whereof partition was so directed to be made; to be had, held and enjoyed by the said S. F., her heirs and assigns, for ever. And it is further ordered, adjudged and decreed, that compensation be made by and between the said parties, for equality of partition, as is mentioned in the said report, that is to say, that the above named defendants, the said J. G. A., A. A., W. A., S. F. A., J. F. A., and J. A. do, for equality of partition, pay to the defendants, the said J. G. G., E. A. G., J. M. G., E. M. G., S. A. G., or to their guardian or guardians, the sum of two hundred and sixteen dollars and sixty-seven cents, and that the complainant do, for equality of partition, pay to the defendants, the said J. G. G., E. A. G., J. M. G., E. M. G., and S. A. G., or to their guardian or guardians, the sum of sixty-six dollars and sixty-six cents, and that such payments be made by the said parties respectively within thirty days after service on them respectively, or on their respective solicitor of a copy of this order, and that execution be had for such sums respectively against such of the said parties as may make default in the payment

of the same. And it is further ordered, that the said piece or parcel of land last above described and mentioned in the said report, to have been designated and set apart by the said commissioners, out of the share and portion of the said lands and premises allotted on the said partition to the defendants, the children of the said A. G., as being equivalent in value to the sum of five thousand dollars, adjudged by the said decretal order of the twenty-ninth day of April, in the year one thousand eight hundred and thirty-nine, to be chargeable on the share and portion of the said last named defendants, of and in the said lands and premises in respect to advancements made by the testatrix, E. G., deceased, out of the moneys arising from the estate of the testator, J. G. A., deceased, in pursuance of his will, be and all and singular the said piece or parcel of land, with the hereditaments and appurtenances thereto belonging, hereby is allotted and assigned to the said defendants, the above named J. G. A., A. A., W. A., S. F. A., J. F. A., and J. A., to be had, held and enjoyed by them according to their several shares and interests therein, as part of the personal estate of the said J. G. G., deceased, that is to say, as to five equal undivided sixth parts thereof to them, the said J. G. A., A. A., W. A., S. F. A., and J. F. A., their heirs and assigns for ever, as tenants in common in equal shares, and as to one equal undivided sixth part thereof to the said J. A., and to his heirs and assigns for ever, in right and as the personal representative of the said J. A., deceased. And it is further ordered, adjudged and decreed, that the said last described piece or parcel of land, be deemed and taken to be a full equivalent for, and satisfaction of the said sum of five thousand dollars, and that all claims and demands of the complainant upon or against the said defendants, the children of the said A. A., deceased, and the defendant J. A., in right and as personal representative of the said J. A., or upon or against the said defendants, the children of the said A. G., or upon or against any or either of them, the said defendants; and also all claims and demands of them, the said defendants, or any or either of them, upon or against any other or others of them, or upon or against the complainant in respect to such advancements be deemed and taken, and are hereby adjudged and declared to be mutually satisfied and discharged.

(Clause for costs, *ante*, p. cccxviii.)

(Copy.)

ALEX. FORBES, *Clerk*.

No. 293, Vol. II.—Page 212.

PETITION FOR SALE OF INFANT'S ESTATE.

In Chancery.

Before the Chancellor.

To the Chancellor of the State of New-York.

The petition of M. H., next friend of C. H., H. H., C. C. H., and J. F. H.,

infants, under the age of 21 years, and over the age of 14 years, (and of the said C. H., H. H., C. C. H., and J. F. H.,) respectfully sheweth :—(a)

That the said C. H. is of the age of twenty-one years and upwards; the said H. H. of the age of eighteen years and upwards; the said C. C. H. of the age of seventeen years and upwards, and the said J. F. H. of the age of ten years and upwards; and that the said C. H. and J. F. reside at Stratford, in the state of Connecticut, and the said C. resides in the city of New-York, and that the father of such infants is now deceased.

Your petitioner further shows, that the said infants have not and are not entitled to any personal estate whatever of any kind or description, and to no other real estate than such as is hereinafter mentioned, except an interest in certain lands and contracts respecting lands situated in the townships of Hague and Cambray, in the county of St. Lawrence, the whole interest and value of which cannot, according to the best of your petitioners information and belief, be the sum of \$1000, and also to an interest in certain lands in Jefferson county, of inconsiderable value.

And your petitioner further shows, that such infants are each entitled to an undivided twelfth part (subject to the dower right of their mother) in and to all and singular a certain lot or parcel of ground situate in the twelfth ward of the city of New-York, between the 3d and 4th avenues, and 69th and 70th streets, comprising about seventy-four lots of ground. That the annual income of such property is about the sum of two hundred and fifty dollars, and the value of the same about twenty-five thousand dollars. Your petitioner also shows, that the co-tenants in common with such infants of the aforesaid premises, intend to make a sale and disposition of their interest in the same, and that a sale of the whole premises would, in the opinion of your petitioner, be advantageous and for the interest of all concerned therein. Your petitioner therefore prays, that H. O., of the city of New-York, may be appointed the special guardian of such infants, for the purpose of selling and conveying such premises and their interest therein. And the said H. O. proposes security to be given in such sum as shall be directed, by his bond, together with S. S. and C. L. L., gentlemen, all of the city of New-York, as his sureties.

And your petitioner, &c.

New-York, 9th June, 1835.

State of New-York, } ss. (Usual Jurat.)
City and County of New-York, }

CONSENT.

I consent to become the guardian of the infants named in the foregoing petition for the purposes therein expressed.

New-York, 9th June, 1835.

(H. O.)

(a) In general, the infant, if over 14, should sign the petition. In this case the chancellor dispensed with it, as they resided out of the state.

No. 294, Vol. II.—Page 214.

AFFIDAVIT OF SURETIES.

(In the matter, &c.)

State of New-York, } ss.
City and County of New-York, }

A. B. and C. D., each of the city of New-York, merchants, being duly sworn, depose and say, and first the said A. B. saith, that he is worth the sum of \$ over and above all his just debts, and responsibilities, which he owes or has incurred. And the said C. D., for himself saith, that he, &c.

No. 295, Vol. II.—Page 214.

CERTIFICATE OF MASTER.

(Title.)

To the Chancellor of the State of New-York.

In pursuance of the 159th rule of this court, J. D. C., one of the masters of this court, residing in the city of New-York, do certify and report, that I have examined the annexed petition, and from testimony taken before me, am satisfied that the material facts stated therein are true. That the ages of the infants C. H., C. C., and J. F. H., are respectively as therein set forth; that the value of the premises sought to be sold is about the sum of \$25,000, and the interest of each of such infants in the same is one equal twelfth part thereof.

I further report, that I am personally acquainted with H. O., the person proposed in such petition as the guardian of such infants, and that he is a suitable and proper person to be appointed such guardian. And that S. S. and C. C. L., the persons proposed as his sureties, are each worth the requisite sum in which security should be given, as hereafter stated, having taken their respective affidavits of justification.

And I further certify and report, that the said H. O., the proposed guardian, should execute a bond, with his sureties aforesaid, to the infant C. H., in the penal sum of \$2972; another bond to the infant H. H., in the penal sum of \$3361; another bond to the infant C. C. H., in the penal sum of \$3556; and another bond to the infant J. T. H., in the penal sum of \$4918; which sums respectively I deem sufficient to cover the amount of such infants' interest in the premises to be sold, with lawful interest thereon, until they respectively arrive at age.

All which, &c.

Dated,

D. C., Master in Chancery.

No. 296, Vol. II.—Page 215.

ORDER APPOINTING GUARDIAN, &c.

At, &c.

Present :

REUBEN H. WALWORTH, *Chancellor.*

In the matter of the Petition
of
M. H., next friend of C. H.,
H. H., C. C. H., and J. F.
H., infants under the age
of 21 years.

On reading the petition of M. H., next friend of the above named defendants, setting forth, among other things, that the said infants are each entitled to one equal undivided twelfth part in and to a certain parcel of ground, situate in the twelfth ward of the city of New-York, between the Third and Fourth Avenues and Sixty-ninth and Seventieth streets, comprising about seventy-four lots of ground, (subject to the dower right of their mother;) that the income of such property is about two hundred dollars, and the value thereof about twenty-five thousand dollars; that the co-tenants, in common with the said infants in the said premises, intend to make a sale of their interest in the same, and that a sale of the whole of the said premises would be advantageous to the interest of all concerned therein, which said petition is duly verified, and prays for the appointment of H. O., of the city of New-York, as special guardian of the said infants, for the purpose of selling and conveying their interest in the said premises. And also on reading and filing the report of T. A. E., Esq., taxing master of the first circuit, who reported in pursuance of the 159th general rule of this court, that he had examined into the circumstances in said petition set forth; that H. O., the person proposed, as special guardian for the said infant, should give a bond to the said infant, C. H., in the penal sum of two thousand nine hundred and seventy-two dollars; one other bond to the said infant, H. H., in the penal sum of three thousand three hundred and sixty-one dollars; one other bond to the said infant, C. C. C., in the penal sum of three thousand five hundred and fifty-six dollars; and one other bond to the said infant J. F. H., in the penal sum of four thousand nine hundred and eighteen dollars; and that the said master had approved of S. S. and C. L. L. as sureties of the said H. O. And on motion of M. H., Esq., solicitor for the said infants, it is ordered, that H. O. be and is hereby appointed the special guardian of the said infants, for the purposes of this application, upon his executing, together with S. S. and C. L. L. as his sureties, four several bonds in the penal sums above mentioned, and filing the same in the office of assistant register (*clerk of*) this court, with the approval of one of the masters of this court endorsed thereon. And it is further ordered, that it be referred to T. A. E., Esq., the said master, to ascertain the truth of the facts stated in the said petition, and whether a sale of the said premises, or any, and what part thereof, will be beneficial to the interests of the said infants, and the particular reasons upon which his

opinion is founded, and to ascertain the value of the property proposed to be sold, and of each separate lot or parcel thereof, and the terms and conditions upon which it should be sold, and whether the said infants are in absolute need of any part of the proceeds of the sale for their support and maintenance over and above the income thereof, and their other property, together with what they might earn by their own exertions; and the said master is required to ascertain, on the principle of life annuities, the value of the dower right, in said premises, of any person who may be entitled to the same, and who is willing to join in the sale. And it is further ordered, that the said master shall not proceed on this reference until the certificate of the assistant register clerk of this court is produced to him, that the bonds herein required have been filed.

(Copy.)

JOHN WALWORTH, *Assistant Register.*

No. 296 A, Vol II,—Page 218.

FORM OF BOND TO BE GIVEN BY SPECIAL GUARDIAN OF INFANTS, APPOINTED FOR
THE PURPOSE OF SELLING AND CONVEYING REAL ESTATE OF SUCH INFANTS.

Know all men by these presents, that we, H. O., of the city of New-York, merchant, and S. S. and C. L. L., of the same place, gentlemen, are held and firmly bound unto C. H., an infant under the age of twenty-one years, in the penal sum of two thousand nine hundred and seventy-two dollars, lawful money of the United States of America, to be paid to said C. H., her heirs, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly, by these presents, sealed with our seals, and dated the day of in the year one thousand eight hundred and thirty-five.

Whereas, by an order of the court of chancery of the state of New-York, entered the 15th day of June, one thousand eight hundred and thirty-five, in the matter of the petition of M. H., next friend of C. H. and others, infants, &c., the above bounden H. O., was appointed special guardian of the above named C. H. and others, infants as aforesaid, for the purposes of the sale of certain real estate of such infants, mentioned in the said petition, and referred to in such order, upon his giving the security therein proposed. Now the condition of this obligation is such, that if the above bounden, H. O., shall faithfully perform the trust reposed in him as such guardian, and shall duly pay over, invest and account for all monies that shall be received by him, according to the order of any court having authority to give directions in the premises, and shall observe the orders and directions of the court of chancery in relation to such trust, then this obligation to be void, otherwise to be and remain in full force and virtue.

Witness,

H. O. (L. s.)
S. S. (L. s.)
C. L. L. (L. s.)

(Usual certificate of a commissioner of deeds of the parties having acknowledged it before them.)

No. 297, Vol. II.—Page 315.

MASTER'S REPORT OF TRUTH OF STATEMENTS, &c., AND OF VALUE OF PROPERTY, SHARES OR INTERESTS OF INFANTS, DOWER, &c., AND SALE IN ONE LOT BEING PROPER, AND OF FILING BOND BY GUARDIAN, &c.

In Chancery.

Before the Chancellor.

In the matter of the Petition
of
M. H., next friend of C. H., H.
H., C. C. H. and J. F. H.,
infants under the age of 21
years.

To the Chancellor of the State of New-York.

In pursuance of an order made in the above entitled matter, and bearing date at the city of New-York, on the 15th day of June, 1835, by which it was ordered that it be referred to me, the subscriber, one of the masters of this court, to ascertain the truth of the facts stated in said petition, and whether a sale of the premises stated in the said petition, or any, and what part thereof, will be beneficial to the interests of the said infants, and the particular reasons upon which his opinion is founded, and to ascertain the value of the property proposed to be sold, and of each separate lot or parcel thereof, and the terms and conditions upon which it should be sold, and whether the said infants are in absolute need of any part of the proceeds of the sale for their support and maintenance, over and above the income thereof and their other property, together with what they might earn by their own exertions; and that the said master ascertain, on the principle of life annuities, the value of the dower right in said premises of any person who may be entitled to the same, and who is willing to join in the sale.

I do report, that the guardian of the said infants, having produced before me a certificate of the assistant register of this court, that the requisite security had been filed agreeably to said order, I proceeded to examine into and ascertain the truth of the facts stated in the said petition, and do report, that the same have been fully and sufficiently proved before me, and that the same are substantially true as therein stated, and that it would be beneficial to the said infants to sell the whole of the said premises, mentioned and described in the said petition as lying between the Third and Fourth Avenues and Sixty-ninth and Seventieth-streets, for the sum of thirty-six thousand dollars.

That each of the said infants is entitled to an equal undivided twelfth part

of said premises, subject to the dower right of their mother; that the infant C. H. is about twenty years of age, the infant H. H. is about eighteen years of age, the infant C. C. H. is about seventeen years of age, and the infant J. F. H. is about ten years of age.

I do further report, that the adult owners of the remaining eight twelfths of said premises have agreed to sell the whole of said premises for the sum of thirty-six thousand dollars, after deducting from such sum an incumbrance on said premises amounting to the sum of two thousand two hundred and fifty dollars, with some interest thereon; that by the terms of sale, one third of the purchase money is to be paid in cash on the delivery of the deed to the purchaser, and the remaining two thirds to be secured by a bond and mortgage executed on said premises by said purchaser, with interest thereon, at the rate of six per cent per annum, and payable half yearly, and which, in my opinion, will be sufficient security for the same.

I do further report, that the said infants have no personal property; that they are at present supported by their mother, out of an income received by her; and that, inasmuch as the adult owners of the said premises have agreed to sell their interest in the same, the expenses of a partition suit will be avoided by allowing the guardian of said infants to join in the sale of the said premises.

I do further report, that the said premises are very unproductive, considering the value thereof, and that they only yield an annual income to the parties interested therein of about two hundred dollars.

I do further report, that the said infants are not in absolute need of any part of the proceeds of said sale over and above the interest to be received therefrom.

I do further report, that M. F. H., the mother of the said infants, and who is entitled to her dower in said premises, is willing to join in said sale; and that I have ascertained, on the principle of life annuities, according to the Northampton Tables, the value of said dower right, and do report the present value of the same to amount to the sum of six thousand six hundred and forty-six dollars and five cents.

All of which is respectfully submitted.

Dated New-York, Sept. 9th, 1835.

(Signed,)

THOS. ADDIS EMMET, *Master in Chancery.*

No. 298, Vol. II.—Page 216.

ORDER AUTHORIZING GUARDIAN TO CONTRACT, &c.

At a Court of Chancery, &c.

Present: REUBEN H. WALWORTH, *Chancellor*.

In the matter of the Petition
of
M. H., next friend of C. H.,
H. H., C. C. H., and J. F.
H., infants under the age of
21 years.

On reading and filing the report of T. A. E., a master of this court, made in the above matter, and dated the ninth day of September, one thousand eight hundred and thirty-five, made pursuant to an order of this court, dated the fifteenth day of June, one thousand eight hundred and thirty-five, and it appearing satisfactory to this court from the said report that a sale of the estate, right, title, and interest of such infants in the premises referred to is required by the interests of such infants, and that such interests will be materially benefitted thereby, for the peculiar reasons and circumstances stated in such report, thereupon on motion of M. H., next friend of the above named infants, in person, it is ordered that such report be confirmed. And it is further ordered, that H. O., the special guardian of such infants be, and he is hereby, authorized and empowered to enter into an agreement for a sale and conveyance of such premises, and all the estate, right, title and interest of the said infants therein at public or private sale, but not for a sum below the proportion of such infants, in the sum of thirty-six thousand dollars, for the whole and absolute interest in such premises, after deducting their proportion of the amount due upon the mortgage mentioned in such report, and the dower right of M. F. H. And it is further ordered, that before executing any deed of conveyance of the said estate and property to the purchaser or purchasers thereof, the said guardian shall report to this court upon oath, the terms and conditions of the agreement made by him, or to which he shall be a party for the sale of the said premises; which premises are described as follows: all that certain lot, piece, or parcel of land, situate, lying and being in the twelfth ward of the city of New-York, and lying between the Third and Fourth Avenues and Sixty-ninth and Seventieth streets, bounded easterly by the Third Avenue, southerly by Sixty-ninth street, westerly by the said Fourth Avenue, and northerly by Seventieth-street, containing on the Third, and also on the Fourth Avenue, two hundred feet and ten inches; and on the line of Sixty-ninth street, and also of Seventieth-street nine hundred and twenty feet, more or less.

(Copy.)

JOHN WALWORTH, *Assistant Register*.

No. 200, Vol. II.—Page 217.

SPECIAL GUARDIAN'S REPORT OF AGREEMENT TO SELL AND CONVEY, &c.

*In Chancery.**Before the Chancellor.*

In the matter of the Petition
of
M. H., next friend of C. H.,
H. H., C. C. H., and J. F.
H., infants under the age
of 21 years.

To the Chancellor of the State of New-York.

In pursuance of an order of this court, made in the above matter, and dated the 22d day of September, in the year one thousand eight hundred and thirty-five, I, the subscriber, the special guardian therein named, do report, That I have entered into an agreement for the sale of the right, title, and interest of the above named infants, in and to the premises mentioned in such order, with A. D. F., of the city of New-York, merchant; that the consideration money to be paid by the said A. D. F., for the whole right and title of the widow and heirs of M. H., in such premises, is the sum of thirty-six thousand dollars; that after deducting therefrom the sum of two thousand two hundred and fifty dollars, the amount due upon a certain bond and mortgage upon the premises, and the sum of six thousand six hundred and forty-six dollars and five cents, the value of the dower right of M. F. H. therein, there remains the sum of two thousand two hundred and fifty-eight dollars and sixty-six cents as the share of each of such infants in such purchase money, or the sum of nine thousand and thirty-four dollars and sixty-four cents the amount due to them collectively. And I do further report, that the terms and conditions on which I have made such agreement for the sale of the estate of the infants in such premises, subject to the approbation of this court, are, to take a bond of the said purchaser for the whole amount of the interest of such infants, secured by a mortgage upon the said premises, the interest at six per cent. per annum; that after the cash payment to be made by such purchaser, which will amount to about the sum of seven thousand seven hundred and fifty dollars, the premises will, in my opinion, be an ample security for the payment of the amount of the shares of such infants, as well as of the balance payable to the other parties in interest.

All which is respectfully submitted.

New-York, October 5th, 1835.

(*Jurat.*)

No. 300, Vol. II.—Page 217.

ORDER OF CONFIRMATION OF REPORT, AND FOR CONVEYANCE, &c.

*In Chancery.**Before the Chancellor.*

In the matter of the Petition
 of
 M. H., next friend of C. H.,
 C. C. H., H. H., and J. }
 F. H.

At, &c.

Present:

REUBEN H. WALWORTH, *Chancellor.*

The report of H. O., special guardian of the above named infants, dated the fifth day of October, in the year one thousand eight hundred and thirty-five, being read and filed, stating that he had entered into an agreement with A. D. F., of the city of New-York, merchant, for the sale to him of the right, title, and interest of the above named infants, in and to the premises situated and lying in the city of New-York, between the Third and Fourth Avenues and Sixty-ninth and Seventieth streets, more particularly described in the petition of the above named M. H.; that the consideration to be paid to the widow and heirs of M. H., for the whole of their right, title, and interest in such premises, is the sum of \$36,000; that the sum of \$2250 is to be deducted therefrom, being the amount due upon a bond and mortgage upon such premises; and that the amount to be paid to M. F. H., the widow of said M. H., as and for her dower right, is the sum of \$6,646 05; and that there will remain the sum of \$3258 66, as the share of each of such infants in the premises; and further stating that he had agreed, subject to the approbation of this court, to take a bond for the whole aggregate amount coming to such infants, secured by a mortgage upon such premises, with interest at six per cent., payable half yearly. Thereupon, on motion of M. H., in person, it is ordered, that such report, and all therein contained, be and the same is hereby ratified and confirmed.

And it appearing satisfactorily to this court, from the reports, testimony, and proceedings in this matter, that the interest of such infants will be substantially promoted by a sale of such premises, and their interest therein: Thereupon, it is upon the like motion, ordered and adjudged, and this court, by virtue of its power, and of the statute in such case made and provided, doth order and adjudge, that the said H. O., special guardian as aforesaid, do execute, acknowledge and deliver unto the said A. D. F., a good and sufficient conveyance of all the estate, right, title and interest of the said C. H., H. H., C. C. H., and J. F. H., in and to the premises aforesaid, upon receiving from said A. D. F., four several bonds to the assistant register of this court, on behalf of such infants, each in the penal sum of \$4500, and each conditioned for the payment to the infant named therein, of the sum of \$3258 66, upon his or her arriving at the age of 21 years, with interest at

the rate of 6 per cent. per annum, payable half yearly; which bonds shall be secured by a mortgage upon one half part of such premises, either upon specific lots or parcels being one half in value, or upon an undivided half part as the said purchaser and such assistant register shall agree upon. And it is further ordered and adjudged, that such assistant register do deposit the moneys, which shall be from time to time received by him for interest upon such bonds, or either of them, in the Trust Company, to accumulate for the benefit of such infants respectively.

No. 301, Vol. II.—Page 217.

DEED OF GUARDIAN.

This indenture, made the day of in the year 1839, between J. A. K., guardian of C. K., Jun., A. C. K., and E. S. K., children of C. K. and E. his wife, now deceased, and infants, each under the age of twenty-one years, and over the age of fourteen years, parties of the first part; and W. B. B., of the city of New-York, gentleman, party of the second part. Whereas a petition was heretofore presented to the vice-chancellor of the first circuit of the state of New-York, on behalf of the above named infants, praying for a sale of their right, title, and estate in the several premises therein mentioned and described, and of which the hereinafter described premises are part and parcel, upon which petition an order of the court of chancery of the state of New-York was made, bearing date the nineteenth day of February, in the year one thousand eight hundred and thirty-eight, appointing J. A. K., above named, the special guardian of such infants, for the purposes of such petition; and whereas such proceedings were afterwards had upon such petition, that at a court of chancery held for the state of New-York, at the city of New-York, on the eleventh day of January, in the year 1839, it was among other things, in substance, ordered and adjudged, that the above named J. A. K., the special guardian of such infants, be authorized and empowered to sell the several premises therein mentioned, and all the estate, right, title and interest of the above named infants, and each of them therein and thereto; that such sale be made at public auction or private sale, at the discretion of such guardian, and upon the terms approved of in the report of D. C., master in chancery, in such order mentioned; and further, that such sale, with the name of the purchaser, and the terms thereof be reported, upon the oath of such guardian, to the said court, before the conveyance of such premises was executed.

And whereas the said J. A. K., special guardian aforesaid, proceeded to offer for sale such premises, and the right, title and interests of the said infants therein and thereto, at public auction, in the city of New-York, on the 28th day of January last past, upon the terms approved of by such master, at which sale the party hereto of the second part entered into an agreement for the purchase thereof for the sum of \$7,400, that being the highest sum bid for

the same ; and thereupon the said guardian made a report of such agreement for a sale of such premises to this court, under oath, pursuant to the requisitions of such last recited order ; upon which an order was made bearing date the day of March, in the year 1839, confirming such report, and approving and confirming such sale, and directing the same to be carried into effect.

Now, therefore, this indenture witnesseth, that the said parties of the first part, by J. A. K., their special guardian as aforesaid, for and in consideration of the sum of \$7,400, lawful money of the state of New-York, to them in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained and sold, remised, released and conveyed, and by these presents do grant, bargain and sell, remise, release and convey, unto the said party of the second part, his heirs and assigns, *All the, &c.*, and all the right, title and interest, property, possession and claim of them, the said parties hereto of the first part, infants as aforesaid, of, in and to the same, and every part and parcel thereof, with the appurtenances ; to have and to hold the same, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their only proper use, benefit and behoof, for ever.

In witness whereof, &c.

No. 302, Vol. II.—Page 219.

PETITION FOR APPOINTMENT OF GENERAL GUARDIAN.

In Chancery.

Before the Chancellor.

To the Chancellor of the State of New-York.

The petition of M. S., an infant over the age of fourteen years, respectfully sheweth :—

That your petitioner is of the age of eighteen years and upwards, and is now a resident of the city of New-York ; that your petitioner is entitled to the following personal estate, and none other, according to the best of your petitioner's knowledge and belief, viz. : to a bond and accompanying mortgage, executed by J. D., of the said city of New-York, to L. L., the father of your petitioner, dated the day of for the sum of \$1500, to a certain promissory note of, &c., (*detailing the personal property.*)

And your petitioner further shows, that the whole value of such personal estate is about the sum of \$

And your petitioner further shows, that he is seised of and entitled to an estate in fee, in and to the following real estate, situate in such city of New-York, viz., (*a brief description ;*) that the value of such real estate is about

the sum of \$ and the annual gross income thereof about the sum of \$

And your petitioner is desirous of having a general guardian appointed for his person and estate, and proposes B. S., of the said city of New-York, merchant, and uncle of your petitioner, to be such guardian.

And your petitioner, &c.

Dated New-York, &c.

(*Jurat.*)

No. 303, Vol. II.—Page 220.

MASTER'S REPORT UPON PETITION.

In Chancery.

Before the Chancellor.

In the matter of the Petition
of
M. S., an infant. }

To the Chancellor of the State of New-York.

In pursuance of the provisions of the 151st rule of this court, I, the subscriber, one of the masters of this court, do certify and report, that my place of residence is in the village of in the county of and the residence of the above named infant is in the village of in such county, and that there is no master of this court residing nearer to such infant than myself; that the petition of such infant has been laid before me, and application made to me to inquire into the matters therein stated, and directed by such rule to be inquired into, and thereupon I report: that such infant has appeared before me, and from inspection, as well as the affidavit of B. D., taken before me, I find the age of such infant to be eighteen years and upwards; that I have examined him as to his nomination of a guardian, and that he voluntarily nominated B. S., of the said village of to be such guardian; and I am of opinion that the said B. S. is a proper and suitable person to be appointed such guardian.

And I further report, that the amount of the personal property belonging to such infant is about the sum of \$ consisting of the several items of property set forth in such petition; that the gross annual amount of the rents and profits of the real estate of such infant is the sum of \$200, and such amount for the period of his minority will be the sum of \$

And I further report, that such guardian has proposed J. K., of and L. C., of as his sureties; and having examined into their sufficiency, and taken from them the usual affidavit, I certify that the security so offered is sufficient, and that each of such proposed sureties is worth the sum of \$ over and above all his debts.

And I further report, that security should be given by such guardian in the sum of \$4000.

And I further report, that I summoned J. S., another uncle of such infant, to attend before me upon the inquiry so made by me, and have examined him under oath touching the matters above stated.

All which I respectfully submit.

No. 304, Vol. II.—Page 211.

ORDER UPON REPORT AS TO GENERAL GUARDIAN.

At, &c.

Upon reading and filing a petition of M. S., an infant over the age of 14 years, and a report of J. M., one of the masters of this court, dated the day of instant, from which it appears that the personal estate of such infant amounts to the sum of \$ and the gross amount of the rents and profits of his real estate during his minority amounts to the sum of \$ and that the security to be given by the guardian of such infant should be in the sum of \$4000. And also reporting that B. S., the uncle of such infant, is a suitable and proper person to be appointed the guardian of his person and estate, and that J. R. and L. C., are proper and sufficient sureties for the said B. S. Thereupon, on motion of J. R., of counsel for such infant, it is ordered, that the said B. S. be and he is hereby appointed the guardian of the person and estate of such infant, upon his executing a bond to such infant, in the sum of \$4000, together with the said J. K. and L. C., as his sureties, duly acknowledged or proven according to the statute, and filed with the assistant register of this court, which bond shall be approved by the said master, and his certificate of approval of the form and manner of the execution thereof shall be endorsed thereupon.

No. 305, Vol. II.—Page 205—221.

BOND OF GENERAL GUARDIAN.

Know all men by these presents, that we, B. S., of, &c., and J. K. and L. C., each of, &c., are held and firmly bound unto M. S., an infant under the age of twenty-one years, in the just and full sum of \$4000, lawful money, &c.

(Ordinary Form of Bond.)

Whereas, at a court of chancery held for the state of New-York, in the city of New-York, on the day of an order was made in the matter of the petition of M. S., an infant, whereby the above named B. S. was appointed general guardian of the above named infant, upon filing a

bond as therein required. Now, the condition of this obligation is such, that if the said B. S., shall justly and faithfully perform the trust reposed in him as such guardian of the said infant, under the seventh article of the second title of the first chapter of the third part of the Revised Statutes of the state of New-York, and shall observe all such orders as shall be made by the court of chancery in the premises, in relation to such trust, then this obligation to be void, otherwise to remain in full force.

I approve of this bond, as to form and manner of execution.

S. C., *Master in Chancery.*

No. 306, Vol. II.—Page. 222.

INVENTORY OF PROPERTY BY GUARDIAN.

(See APPENDIX TO RULES, No. 18.)

No. 307, Vol. II.—Page 223.

PETITION FOR INFANT TRUSTEE TO CONVEY.

In Chancery.

Before the Vice-Chancellor.

The petition of A. B., of _____ in the state _____ respectfully sheweth: That on or about the 7th day of March, in the year 1832, L. B., then of the city of New-York, merchant, was applied to by E. B., a daughter of your petitioner, your petitioner then residing in Richmond, Massachusetts, for information and advice as to the investment of certain moneys then belonging to your petitioner, and which she expected shortly to receive. That in reply to such application, and some time in the said month of March, 1832, the said L. B. addressed a letter to the said E. B., in the words and figures, or to the intent following, to wit: (*here copy letter,*) as by such letter now in your petitioner's possession, and ready to be produced, as this court shall direct, will on reference appear.

And your petitioner further shows, that on or about the 27th day of April, in the year 1832, T. T. B. and wife conveyed to the said L. B., by deed, bearing date such day and year last aforesaid, a certain lot of ground in the city of New-Brooklyn, bounded and described therein as follows, to wit: (*Here insert the boundaries.*)

And your petitioner further shows, that shortly after receiving such conveyance, the said L. B. addressed another letter to the said E. B., daughter of your petitioner in the words and figures following, to wit: (*here copy letter,*) as by such letter now in your petitioner's possession to be produced, as this court shall direct, will on reference appear.

And your petitioner further shows, that both before and about and after the time of such purchase, the said L. B. repeatedly avowed and declared, that he was about to purchase, or had purchased and held the said lot of ground for the use and benefit, and on account of your petitioner.

And your petitioner further shows, that an account was opened by the said L. B., in his own books, with your petitioner, in relation to such lot, and the purchase money, rents and charges of the same, a true transcript of which account is hereto annexed, marked A; that by such account it appears that the said L. B. had forthwith charged your petitioner with the sums paid down upon such purchase, and with moneys subsequently paid for taxes and other charges, and had credited your petitioner with \$500 received from R. B. on your petitioner's account, as well as with the rents of such house and lot.

And your petitioner further shows, that sometime in the month of in the year eighteen hundred and the said L. B. executed and signed and sealed a deed to your petitioner for such premises, but that such deed was not delivered, inasmuch as the wife of the said L. B. refused to unite in the same.

And your petitioner further shows, that the said L. B. departed this life some time about the month of September, in the year eighteen hundred and thirty-five, leaving the following children, all of whom are infants under the age of twenty-one years, viz: T. L. B., E. A., M. L., C. H. and L. J. B.; and also leaving his widow, J. E. B., him surviving.

And your petitioner further shows, that the legal estate in such premises hath vested in the said infants above named, and the same cannot be conveyed to your petitioner without the order and direction of the court of chancery, in pursuance of the statute in such case provided. And your petitioner is advised that such infants are trustees within the intent and meaning of the 173d section of the seventh article of first chapter and third part of the Revised Statutes; which article is entitled, "Of proceedings in relation to the conveyance of lands by infants, and the sale and disposition of their estates."

Your petitioner therefore prays, that the said T. L. B., E. A., M. L., C. H. and L. J. B., infants as above mentioned, may be directed, by the order of this honorable court, to release and convey the said premises hereinbefore described, and all their estate, right, title and interest therein, unto and to the use of your petitioner, her heirs and assigns, or to such person or persons, and in such manner and form as your petitioner shall direct, upon satisfaction by your petitioner of any balance due upon account of the purchase of such lands and premises, or of the charges attending the same.

And your petitioner shall ever pray, &c.

(Usual Jurat.)

No. 308, Vol. II.—Page 223.

ORDER ON PETITION.

In the matter of the petition of

At, &c.

Upon reading and filing the petition of _____ duly verified, and on motion of Mr. _____ of counsel for such petitioner, it is ordered, that it be referred to D. C., one of the masters of this court, residing in the city of New-York, to examine and certify how the estate in the premises set forth in such petition is vested in the said A. B., and whether he is an infant, and a trustee of the said premises, or any and what part thereof, within the intent and meaning of the seventh article of title second chapter first of the third part of the Revised Statutes of the state of New-York. And it is further ordered, that notice to attend such master be given to the guardian of said A. B., or to some relative of the said A. B., competent to protect his right. And upon the coming in of such report, such further order shall be made as shall be just.

(See A REPORT HOFFMAN'S MASTER IN CHANCERY, p. 370.)

No. 309, Vol. II.—Page 223.

ORDER UPON COMING IN OF REPORT.

At, &c.

Upon the reading the petition of _____ duly verified, and reading and filing a report of D. K., one of the masters of this court, dated the _____ day of _____ instant, made in pursuance of an order of this court, dated the _____ day of _____ last, whereby it appears that (*recite the facts of the report.*) And further, that the premises set forth and described in such petition, are vested in A. B., in fee simple; that the said A. B. is an infant, and holds such premises as trustee of the petitioner, who is entitled to the equitable estate and beneficial interest therein, and is an infant trustee within the statute referred to in such order. Thereupon, on motion of Mr. H., of counsel for the petitioner, it is ordered, that such report be, and the same is hereby ratified and confirmed. And further, that the said A. B., the infant, do convey the said trust premises, of the legal estate in which he is seised, to the said _____ the petitioner, according to the true intent of the act aforesaid.

No. 310, Vol. II.—Page 225.

PETITION FOR AN INFANT TO EXECUTE CONTRACT.

To, &c.

The petition of D. R., of the city of New-York, respectfully sheweth :— That on or about the 16th day of March, in the year 1833, your petitioner entered into a contract in writing with one J. M., of the same place, merchant, and now deceased, for the purchase, by your petitioner, of a certain lot of land lying in the said city, and situate in the fourth ward thereof, known and distinguished by the number in street, a true copy of which contract is hereto annexed, marked A. That such contract was duly signed by your petitioner and the said J. M. That the full and true boundaries of such lot of ground and premises are as follows, to wit: *All that, &c.*

Your petitioner further shows, that at the time of making such contract, he paid unto the said J. M. the full sum of three hundred dollars, mentioned in the endorsement upon such contract as having been paid down in pursuance of the stipulation of such agreement. That before the period fixed therein for the completion of such agreement, to wit, on or about the day of last past, he, the said J. M., departed this life, leaving such contract unperformed, but binding upon him and upon his heirs. That the said J. M., as your petitioner is informed and believes to be true, died intestate, and leaving A. M., his only child and heir at law, upon whom the legal estate in such premises has descended, subject to the rights of your petitioner. That your petitioner was and hath ever been since the day fixed in such contract for its completion, ready and willing to perform the same, and is now willing and desirous to have the same executed.

Your petitioner therefore prays, that the said A. M., the infant heir, may be decreed to convey such lot of ground and premises to your petitioner, upon his paying, or securing to be paid as this court shall direct, the balance required to be paid in and by the contract aforesaid.

And your petitioner, &c.

(Jurat.)

ORDER UPON THE PETITION.

At, &c.

Upon reading and filing a petition of D. R., duly verified, and dated the day of instant, and on motion of Mr. R., of counsel for such petitioner, it is ordered, that it be referred to S. C., one of the masters of this court, to examine and report as to the truth of the facts set forth therein; and especially whether such contract as is therein stated was duly and legally entered into by the said J. M., in his life time, with the petitioner, and whether any part of the purchase money expressed therein has been paid; and to certify whether it is proper that a specific performance of such agreement, if he shall find the same duly entered into, ought to be decreed, with liberty to state any special circumstances. And one of the solicitors of this court, is hereby appointed guardian ad litem of such infant, to appear

for him on such reference and the future proceedings herein, to whom let notice of all future proceedings be given, and the master is to report with all convenient speed.

No. 311, Vol. II.—Page 225.

REPORT OF THE MASTER ON THE PETITION.

To, &c.

(The report, after reciting the order, stated the proof of the contract by testimony of the hand-writing of the deceased, and payment of the money by the same evidence as to his receipt. Also the age of the infant; death of the vendor intestate; that the price was paid; and that it was a proper contract to be executed.)

No. 312, Vol II.—Page 225.

ORDER FOR CONVEYANCE BY INFANT.

At, &c.

In the matter, &c.

Whereas by an order made in the above matter, and dated the _____ it was in substance ordered, (*recite order.*) And *whereas* in pursuance of such order a report was made by S. C., one of the masters of this court, dated the _____ day of _____ whereby he in substance certified and reported, that, (*substance of report.*) Now, upon reading and filing such report, and upon motion of Mr. R., of counsel for the above named petitioner, it is ordered, that such report be and the same is hereby confirmed. And it is further ordered and decreed, and this court doth order and decree, that the said A. M., the infant heir of the said J. M., named in such petition and report, do execute a conveyance in fee of all and singular the lot of land and premises in the said petition set forth unto the said D. R., the petitioner, his heirs and assigns, such conveyance to be approved of by the said master, and to be executed by the said infant, (*if able to execute,*) (or) such conveyance to be executed by _____ the guardian ad litem of such infant, in the name of the said infant. (See in the matter of *Windle*, 2 Edw. 591. Hoffman's Pr., vol. ii. p. 217. Office, &c., of Masters in Chancery, 146.)

No. 313, Vol. II.—Page 232.

ORDER IN CASE OF ALLEGED IMPOTENCY.

(See 5 Paige, 558.)

No. 314, Vol. H.—Page 233.

AFFIDAVIT OF REGULARITY.

(See *Ante*, this APPENDIX, No. 258.)

No. 315, Vol. II.—Page 234.

SENTENCE OF NULLITY OF MARRIAGE.

At, &c.

This cause coming on to be heard upon the pleadings and proofs, or (upon the bill of complaint taken as confessed, and the master's report and testimony annexed thereto,) and it appearing that the bill is to have the marriage heretofore celebrated between the complainant and defendant annulled and declared void, by reason of the physical incapacity of the complainant duly to consummate such marriage; and it appearing further to this court that such physical incapacity did exist at the time of entering into such marriage, and that the same still continues, and is incurable: Thereupon, on hearing Mr. of counsel for the complainant, and Mr. on behalf of the defendant, and deliberation being thereupon had, it is adjudged, declared and decreed, and this court doth adjudge, declare and decree, that such marriage heretofore entered into between the complainant and defendant is wholly null, invalid, and void from the date of this decree. And it also appearing that both the said complainant and defendant are now alive, it is also adjudged and decreed that this sentence or decree shall be deemed and taken conclusive evidence of the invalidity of such marriage in all courts and proceedings. And it is further ordered and decreed, that the defendant pay to the complainant her costs of suit to be taxed.

No. 316, Vol. II.—Page 236.

BILL FOR DIVORCE FOR ADULTERY.

*In Chancery.**Before the Vice-Chancellor.**To the Chancellor of the State of New-York.*

Humbly complaining, shows unto your honor, your oratrix M. B., of the city of New-York, now wife of J. B., that on or about the day of in the year one thousand eight hundred and your oratrix intermarried

with the said L. B., in the city and county of New-York, and has continued to live with the said L. B. from such period until shortly before the present time as his wife, and that from the period of such marriage they have been, and at the time and times of the commission of the adultery hereinafter set forth were and now are inhabitants of this state.

And your oratrix further shows, that during her intermarriage with the said L. B. she has had five children by him, all of whom are still living, viz. W., of the age of sixteen and upwards, &c.

And your oratrix further shows, that she is informed and believes, and charges the truth to be, that the said L., disregarding the solemnity of the marriage vow, hath since the said marriage of your oratrix with him committed adultery at divers places, and especially that the said L., on some day or days during the month of in the year one thousand eight hundred and but on what day in particular your oratrix is ignorant, at the village of in the county of did commit adultery and have carnal connection with one and that the said L. had, at various other times during the month of and of in such year, committed carnal connection with the said at the said village of in the county aforesaid, or at some other place or places within such county.

And your oratrix further shows, that she is also informed and believes, and therefore charges the truth to be, that the said L., on some day or days in the month of in the year one thousand eight hundred and committed adultery and had carnal connection with one at the town of in the county of and also with the same person during such month of at the village of in the county of

And your oratrix further shows, that she is informed and believes, and therefore charges that the said L. did also, at the said village of or in the town of in which such village is situated, and during the months of and in the said year one thousand eight hundred and commit adultery, and had carnal connection with divers other persons, but whose names are wholly unknown to your oratrix.

And your oratrix further shows, that the said L. resided at in the county aforesaid, for and during the months of and in the year one thousand eight hundred and And that the said L. returned to the city of New-York where your oratrix then resided, and for and during the months aforesaid had resided, sometime in the month of one thousand eight hundred and

And your oratrix further shows, that she has been wholly and entirely ignorant of the commission of the aforesaid acts of adultery, or either of them, or of any other acts of adultery by the said L., until after the day of last past, when she left the house of the said L. That five years have not elapsed since the discovery by her of the fact of such adultery; that she has not voluntarily cohabited with him since the discovery thereof, and that such adultery was committed without her consent, connivance, privity, or procurement.

In consideration whereof, and to the end that the said L. may full, true, and perfect answer make to all and singular the premises, and that as fully and particularly as if the same were herein repeated paragraph by paragraph and

he interrogated thereto. And that the marriage between your oratrix and the said L. may be dissolved, and a divorce decreed according to the statute in such case made and provided. And that your oratrix may have such further relief, or such other relief in the premises as shall be equitable, may it please your honor to grant unto your oratrix the people's writ of subpœna, issuing out of and under the seal of this court, directed to the said L. B., thereby commanding him, at a certain day and under a certain pœnalty therein to be expressed, to be and appear before your honor, in this honorable court, then and there to answer the premises, and to stand to and abide such order and decree therein as to your honor shall seem meet, and shall be agreeable to equity. And your oratrix shall ever pray, &c.

M. B.

M. H., *Solicitor for Complainant.*
G. F., *of Counsel.*

State of New-York, }
City and County of New-York, } ss.

On the day of May, before me personally appeared the above named M. B., and made oath that she has read the above bill subscribed by her, and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters which are therein stated to be on her information or belief, and as to this matter she believes it to be true.

R. G., Jr., *Commissioner of Deeds.*

No. 317, Vol. II.—Page. 236.

ORDER OF REFERENCE UPON BILL AS CONFESSED IN ADULTERY CAUSE.

At, &c.

The complainant's bill of complaint having been taken as confessed by the defendant, and it appearing that such bill charges the defendant with having committed adultery since the intermarriage between them, thereupon, on reading the affidavit of such complainant, showing the regularity of the proceedings to take such bill as confessed, and on motion of Mr. of counsel for the complainant, it is ordered, that it be referred to one of the masters of this court, residing in the county of to take proof of the facts charged in such bill, and to report such proof to this court, with his opinion thereon.

No. 317 A, Vol. II.—Page 237.

ORDER FOR AN ISSUE UPON ADULTERY DENIED.

[*Memorandum.*—I do not know whether or not any decision has been made as to the making up an issue in the case an adultery bill, under the act of May, 1839, and the 67th Rule. It is to be noticed that there is no discretion in the chancellor in this case. But an issue must be directed. My impression however is, that the true practice will be, to adopt the frame of the issue and the proceedings to the act and rule. It seems advisable that the practice should be uniform. It must be also noticed that the trial can only be had in a circuit court.

For the forms of such proceedings, see *post*, Nos. 347, 348, 349, and 350.

The following are forms used under the previous practice, and will be proper unless this suggested variance of the practice is adopted.]

No. 317 A, Vol. II.—Page 237.

ORDER FOR FEIGNED ISSUE.—(*See mem. supra.*)*In Chancery.**Before the Vice Chancellor.*

M. B. }
v. }
L. B. }

At a Court of Chancery, held for the State of New-York, at the city of New-York, on the eighth day of October, in the year eighteen hundred and thirty-three.

Present :

WM. T. McCoun, *Vice-Chancellor.*

The bill in this cause being filed for a divorce, *a vinculo matrimonii*, on the ground of adultery, and the defendant having filed an answer thereto, denying the acts of adultery therein charged, and a replication having been filed to such answer, as appears by the affidavit of M. H., solicitor for the complainant, this day filed: on motion of the said M. H., and upon hearing W. S. L., Esq., solicitor for the defendant, in opposition thereto, it is ordered that a feigned issue be made up and formed, to try the allegations of adultery set forth in such bill; that such issue be tried before a jury of the country in the county of _____ at the next circuit court to be held in such county, on the third Monday of November next, or at some subsequent circuit court,

before one of the justices of the supreme court, or a circuit judge; that the solicitor for the complainant make up such issue, and serve a copy thereof on the defendant's solicitor, without delay; and that the same be settled by one of the masters of this court in case the parties differ respecting it. 2 R. S. 203-4

No. 318, Vol. II.—Page 237.

FEIGNED ISSUE.

Supreme Court.

Tompkins County, to wit—John Doe, by M. H., his attorney, complains of Richard Roe, being in custody, &c.—For that, whereas, heretofore, to wit, on the *twelfth* day of October, in the year of our Lord one thousand eight hundred and thirty-three, at the village of Ithaca, in the county of Tompkins, a certain discourse was moved and had by and between the said J. D. and the said R. R. of and concerning one R. I. R., of the city and county of New-York, gentleman, and M. H. his wife, and of and concerning a certain suit or action then depending in the court of chancery of the state of New-York, brought by the said M. H. R., complainant, against the said R. I. R., defendant, and upon that discourse a question then and there arose and was debated, between the said J. D. and the said R. R., whether the said R. I. R., the husband of the said M. H. R., had ever committed adultery, after his intermarriage with her, and before the fourth day of June, in the year 1833, or not; and the said J. D. then and there asserted and affirmed, that the said R. I. R., after his intermarriage with the said M. H. R., and before the said fourth day of June, in the year 1833, that is to say, in the month of November, in the year 1831, had committed adultery, that is to say, with one S. W., to wit, in the village of Ithaca, in the county of Tompkins, in the state of New-York, which said assertion and affirmation of the said J. D. the said R. R. then and there wholly denied, and asserted the contrary thereof; and afterwards, to wit, on the day and year first above mentioned, at the village of Ithaca, in the county of Tompkins aforesaid, in consideration that the said J. D., at the special instance and request of the said R. R., had then and there paid to the said R. R. the sum of fifty dollars, lawful money of the United States of America, he, the said R. R., then and there undertook, and to the said J. D. faithfully promised to pay him, the said J. D., the sum of one hundred dollars, like lawful money as aforesaid, in case he, the said R. I. R., had committed adultery as aforesaid, after his intermarriage with the said M. H. R., and before the said fourth day of June, 1833, with the said S. W. And the said J. D. in fact saith, that the said R. I. R., after his intermarriage with the said M. H. R., and before the said fourth day of June, in the year 1833, to wit, in the month of November, in the year 1831, and also to wit, on a certain day or days in the month of December, in the said year 1831, and also to wit, on a certain day or days in the month of

Any day prior to the term in the caption and after bill filed.

Filing of bill.

January, in the year 1832, did commit adultery, that is to say, with the said S. W., to wit, at the said village of Ithaca, in the county of Tompkins aforesaid, whereof the said R. R. afterwards, to wit, on the thirteenth day of October, in the year 1833, at the village of Ithaca, in the county of Tompkins, had notice; by reason whereof the said R. R. became liable to pay to the said J. D. the said sum of one hundred dollars whenever he, the said R. R., should be thereunto afterwards requested; and being so liable, he, the said R. R., in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the village of Ithaca, in the county of Tompkins aforesaid, undertook, and to the said J. D. then and there faithfully promised to pay him the said sum of one hundred dollars, when he, the said R. R., should be thereto afterwards requested. Nevertheless, the said R. R., not regarding his said promise and undertaking by him in form aforesaid made, hath not yet paid to the said J. D. the sum of one hundred dollars or any part thereof, although so to do the said R. R. was requested by the said J. D., afterwards, to wit, on the thirteenth day of October, in the year 1833 aforesaid, and often since, to wit, at the village of Ithaca, in the county of Tompkins aforesaid, but to pay the same to the said J. D., he, the said R. R., hath hitherto wholly neglected and refused, and still doth neglect and refuse.

g
Count with
W. at other
places in
same county.

And also for that, whereas, heretofore, to wit, on the 12th day of October, in the year 1833, in the county of Tompkins, a certain other discourse was moved and had by and between the said J. D. and the said R. R. of and concerning a certain other suit or action then depending in the court of chancery of the State of New-York, brought by the said M. H. R., complainant against the said R. I. R., defendant. And upon that discourse a question then and there arose and was debated between the said J. D. and the said R. R., whether the said R. I. R., the husband of the said M. H. R., had ever committed adultery after his intermarriage with her, and before the fourth day of June, in the year 1833, or not. And the said J. D. then and there asserted and affirmed, that the said R. I. R., after his intermarriage with the said M. H. R., and before the said fourth day of June, in the year 1833, that is to say, on a day and on certain days in the month of December, in the year 1831, had committed adultery, that is to say, with one S. W., to wit, in the county of Tompkins in the state of New-York, which said affirmation and assertion of the said J. D. the said R. R. then and there wholly denied, and asserted the contrary thereof. And afterwards, to wit, on the day and year first abovementioned, in the county of Tompkins aforesaid, in consideration that the said J. D. at the special instance and request of the said R. R., had then and there paid to the said R. R. the other further sum of \$50, lawful money of the United States of America, he, the said R. R., then and there undertook and faithfully promised the said J. D. to pay him the sum of one hundred dollars like lawful money, in case he, the said R. I. R., had committed adultery as aforesaid, after his intermarriage with the said M. H. R., and before the said 4th day of June, 1833, with the said S. W. And the said J. D. in fact saith, that the said R. I. R., after his intermarriage with the said M. H. R., and before the said fourth day of June, in the year 1833, to wit, in the month of Decem-

ber in the year 1831, did commit adultery, that is to say, with the said S. W., to wit, in the said county of Tompkins aforesaid, whereof the said R. R. afterwards, to wit, on the 13th of October, in the year 1833, in the county of Tompkins, had notice. By reason whereof the said R. R. became liable to pay to the said J. D. the said sum of one hundred dollars whenever he, the said R. R., should be thereunto afterwards requested. And being so liable, he the said R. R. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, in the county of Tompkins aforesaid, undertook and to the said J. D. then and there faithfully promised to pay him the said sum of one hundred dollars, when he, the said R. R., should be thereto afterwards requested. Nevertheless, the said R. R. not regarding his said promise and undertaking by him in form aforesaid made, hath not yet paid to the said J. D. the said sum of one hundred dollars or any part thereof, although so to do the said R. R. was requested by the said J. D. afterwards, to wit, on the 13th day of October, in the year 1833, aforesaid, and often since, to wit, in the county of Tompkins aforesaid; but to pay the same to the said J. D. he the said R. R. hath hitherto wholly refused, and still doth refuse.

And also for that whereas, heretofore, to wit, on the 12th day of October, in the year 1833, in the county of Tompkins, a certain other discourse was moved and had by and between the said J. D. and the said R. R. of and concerning a certain other suit or action then depending in the court of chancery of the State of New-York, brought by the said M. H. R., complainant, against the said R. I. R., defendant; and upon that discourse a question then and there arose and was debated between the said J. D. and the said R. R. whether the said R. I. R. had ever committed adultery after his intermarriage with the said M. H. R. and before the fourth day of June in the year eighteen hundred and thirty-three, or not. And the said J. D. then and there asserted and affirmed that the said R. I. R., after his intermarriage with the said M. H. R., and before the said fourth day of June, in the year eighteen hundred and thirty-three, that is to say, on some certain day or days in the month of March, in the year one thousand eight hundred and thirty-two, had committed adultery, that is to say, with one M. J. M. or M., to wit, in the town of Skeneateles, in the county of Cayuga, and State of New-York, which said affirmation and assertion of the said J. D. the said R. R. then and there wholly denied, and asserted the contrary thereof. And afterwards, to wit, on the day and year aforesaid, in the county of Tompkins aforesaid, in consideration that the said J. D. at the special instance and request of the said R. R., had then and there paid to the said R. R. the other and further sum of fifty dollars, lawful money of the United States of America, he the said R. R., then and there undertook and faithfully promised the said J. D. to pay to him the other and further sum of one hundred dollars, like lawful money, in case he, the said R. I. R., had committed adultery as aforesaid, after his intermarriage with the said M. H. R. and before the said fourth day of June, in the year 1833. And the said J. D. in fact saith, that the said R. I. R., after his intermarriage with the said M. H. R., and before the said fourth day of June in the year 1833, to

Third Count
March, 1833,
with M. in
Skeneateles.

wit, on a certain day, or on certain days in the month of March, in the year eighteen hundred and thirty-two, did commit adultery, that is to say, with the said M. J. M. or M., to wit, in the said (town of Skeneateles) in the county of Cayuga aforesaid, whereof the said R. R. afterwards, to wit, on the 18th of October, in the year one thousand eight hundred and thirty-three, in the county of Tompkins had notice ; by reason whereof the said R. R. became liable to pay the said J. D. the said sum of one hundred dollars, whenever he, the said R. R., should be thereto afterwards requested. And being so liable, he, the said R. R., in consideration thereof, afterwards, to wit, on the day and year aforesaid, in the county of Tompkins aforesaid, undertook, and the said J. D. then and there faithfully promised to pay him the said sum of one hundred dollars, when he, the said R. R., should be thereto afterwards requested. Nevertheless, the said R. R., not regarding his said promise and undertaking by him in form aforesaid made, hath not yet paid to the said J. D. the said sum of one hundred dollars, or any part thereof, although so to do he, the said R. R., was requested by the said J. D. afterwards, to wit, on the thirteenth day of October, in the year eighteen hundred and thirty-three aforesaid, and often since, to wit, in the county of Tompkins aforesaid, but to pay the same to the said J. D., he, the said R. R., hath hitherto wholly refused, and still doth refuse.

Fourth
Count.

And also, for that whereas heretofore, to wit, on the 12th day of October, in the year 1833, in the village of Ithaca, in the county of Tompkins, a certain other discourse was moved and had by and between the said J. D. and the said R. R., of and concerning a certain other suit or action then depending in the court of chancery, in the state of New-York, brought by the said M. H. R., complainant, against the said R. I. R., defendant. And upon such discourse or question then and there arose, and was debated between the said J. D. and the said R. R., whether the said R. I. R., the husband of the said M. H. R. had ever committed adultery after his intermarriage with her, and before the 4th day of June, in the year 1833, or not. And the said J. D., then and there asserted and affirmed, that the said R. I. R., after his intermarriage with the said M. H. R., and before the said 4th day of June, in the year 1833, that is to say, on a certain day, or on certain days in the month of January, in the year 1832, had committed adultery with a certain woman, or with certain women, to the said M. H. R. unknown, to wit, in the village of I., in the county of T., or in the town of U., in the said county of T., and state of New-York, which assertion and affirmation of the said J. D., the said R. R. then and there wholly denied, and asserted the contrary thereof. And afterwards, to wit, on the day and year above mentioned, in the county of T. aforesaid, in consideration that he, the said J. D., at the special instance and request of the said R. R., had then and there paid to the said R. R. the sum of fifty dollars lawful money of the United States of America, he, the said R. R., then and there undertook and faithfully promised the said J. D. to pay him the sum of one hundred dollars like lawful money in case he, the said R. I. R. had committed adultery as aforesaid after his intermarriage with the said M. H. R., and before the said 4th day of June,

1833, with any woman, or with any women, to the said M. H. R. unknown. And the said J. D., in fact saith, that the said R. I. R., after his intermarriage with the said M. H. R., and before the said 4th day of June, 1833, to wit, in the month of January in the year 1832, did commit adultery, that is to say, with a certain woman or with certain women to the said M. H. R. unknown as aforesaid, to wit, in the village of I., in the county of T., or in the town of U., in the said county of T., and state of New-York aforesaid, of which he, the said R. R., afterwards to wit, on the 13th day of October, in the year 1833, in the county of T. aforesaid, had notice; by reason whereof, he, the said R. R., became liable to pay to the said J. D., the said sum of one hundred dollars, whenever he, the said R. R., should be thereto afterwards requested. And being so liable, he, the said R. R., in consideration thereof, afterwards, to wit, on the same day and year aforesaid, in the county of T. aforesaid, undertook, and to the said J. D., then and there faithfully promised to pay him the said sum of one hundred dollars, whenever he, the said R. R. should be thereto requested. Nevertheless, the said R. R., not regarding his said promise and undertaking by him in form aforesaid made, hath not yet paid to the said J. D. the said sum of one hundred dollars, or any part thereof, although so to do, he the said R. R., was requested by the said J. D., afterwards, to wit, on the 13th of October, in the year 1833, aforesaid, and often since, to wit, in the county of Tompkins aforesaid, but to pay the same to the said J. D., he, the said R. R., hath hitherto wholly neglected and refused, and still doth neglect and refuse.

And the said R. R., by W. S. S., his attorney, comes and defends the wrong and injury when, &c., and says that the said J. D. ought not to have or maintain his aforesaid action thereof against him, because he says, that though true it is that the said several discourses in the foregoing declaration mentioned, were had and moved by and between the said J. D., and him the said R. R. wherein the question did arise, as in the several counts of the foregoing declaration is respectively mentioned, and that he, the said R. R., did undertake and promise in manner and form as the said J. D. hath above in that behalf alleged. Nevertheless, for plea in this behalf, the said R. R. saith, that the said R. I. R., the husband of the said M. H. R., did not commit adultery after his intermarriage with her the said M. H. R., and before the said 4th day of June, in the year 1833, as the said J. D. hath above in that behalf alleged. And of this the said R. R. put himself upon the country, and the said J. D. doth the like, &c.

Therefore, the issue above joined, is ordered to be tried at the circuit court, appointed to be held in the village of Ithaca, in and for the county of Tompkins aforesaid, on the first day of June next.

No. 319, Vol. II.—Page 237.

DECREE IN ADULTERY CAUSE.

(Title.)

At, &c.

This cause having been submitted to the court upon the bill of complaint taken as confessed by the defendant, and upon the report of one of the masters of this court, to whom it was referred by an order heretofore entered therein, to take proof of the material facts charged in such bill, thereupon, on reading the bill of complaint, the report of such master, and the proofs accompanying the same, together with the opinion of the said master upon such proofs, from which it satisfactorily appears to this court, that the material facts charged in such bill are true, and that the defendant has been guilty of the adultery charged in such bill; and on motion of Mr. of counsel for the complainant, it is adjudged and decreed, and the chancellor, by virtue of the power and authority of the court, and in pursuance of the statute in such case made and provided, doth hereby adjudge and decree, that the marriage between the said complainant, J. D., and the said defendant, B. D., be dissolved, and the same is hereby dissolved accordingly, and the said parties, and each of them, are and is freed from the obligations thereof. And it shall be lawful for the said J. D., the complainant, to marry again, as though the said B. D. was actually dead; but it shall not be lawful for the said B. D., the defendant, to marry again, until the said J. D. shall be actually dead. [And it further appearing, from the allegations of such bill and the testimony taken before the said master, that the annual income of the said J. D. is about the sum of \$ and that there are two children of the marriage, of the ages respectively of seven and five years, thereupon it is ordered and decreed, that the defendant pay half yearly to the said J. D. or her duly appointed attorney the sum of \$ for her support, and the support and maintenance of such children, and that he give security for such payment, to be approved of by one of the masters of this court, with liberty hereafter to apply for a change of such allowance as may be necessary and proper. 2 *Paige*, 62.]

ANOTHER DECREE ON A FEIGNED ISSUE.

(Title.)

At, &c.

This cause having this day been brought on to be heard, in pursuance of a notice for that purpose given, and an admission of the due service thereof, and also upon reading and filing the circuit roll, and postea on the feigned issue, by a former order of this court directed to be tried in this cause between the above named parties to ascertain whether the adultery charged in the bill of complaint has been actually committed by the defendant; and it further appearing, by the certificate of the Honorable one of the circuit judges of the state of New-York, before whom the said cause was tried at a circuit court held at the in and for the that such issue was tried by a jury duly empannelled, and that the verdict was supported by proof of the charges contained in the bill of complaint, which certificate is also filed, and on hearing: Mr. of counsel for the complainant, and no

one appearing on behalf of the defendant, it is ordered, adjudged and decreed, and the chancellor, by virtue of the authority of the court, and of the statute in such case provided, doth hereby adjudge and decree, that the marriage between the said complainant and the said defendant be dissolved, and the same is hereby dissolved accordingly, and the said parties, and each of them, are and is freed from the obligations thereof. And it shall be lawful for the said the complainant, to marry again, as though the said the defendant, were actually dead; but it shall not be lawful for the said the defendant, to marry again, until the death of the said [And it is further decreed, that the allowance for alimony heretofore made to the said defendant, shall from this time cease to be allowed and paid to her.]

No. 320, Vol. II.—Page 342.

BILL FOR DIVORCE FOR CRUELTY.

To, &c.

Complaining, shows unto your honor, your oratrix, J. D., of, &c., by L. M., of, &c., her next friend, that on or about the day of in the year your oratrix intermarried with one B. D., of the city of New-York, and since continued to live with the said B. D., from that period until the day of last past, as his wife.

That at the time of the solemnization of such marriage your oratrix and the said B. D. were and now are inhabitants of the state of New-York.

That during such intermarriage your oratrix has had five children by the said B. D., all of whom are now living, viz: C., of the age of fourteen on the day of last past; J., &c.

And your oratrix further shows, that the said B. D., wholly disregarding his duty to your oratrix, has, for some time past, and at different times, been guilty of cruel and inhuman treatment of her, and has by his conduct rendered it unsafe and improper for her to cohabit with him. And as evidence and in support of such allegation, your oratrix alleges that the said B. D. (*specify the acts of cruelty with minuteness as to dates and places.*)

And your oratrix further shows, that she was compelled by the violence and outrages of the said B. D. to leave his house, which she accordingly did on the said day of last past, and that she has not since returned to it, and dare not return to it, from the apprehension of suffering personal violence, and even of having her life endangered.

Your oratrix further shows, that the said B. D. is seised or possessed of certain real and personal estate of considerable value and income; such income amounting, as your oratrix believes, to about the sum of \$ annually.

In consideration whereof, and inasmuch as your oratrix is remediless at the common law, therefore, to the end that the said B. D. may, upon his cor-

poral oath, full, true and perfect answer make to all and singular the premises as fully as if the same were herein repeated, and be particularly interrogated thereto, paragraph by paragraph; and that a separation from bed and board for ever may be decreed by this court between your oratrix and the said B. D., according to the statute in such case made and provided; and that it may also be decreed, that your oratrix have the custody, care and education of the children of such marriage, and may have such further relief, or such other relief in the premises, as shall be agreeable to equity:—

May it please, &c.

(Signed by the wife and next friend.)

I appoint L. M., of, &c., my next friend in this suit. Dated, J. D.

No. 321, Vol. II.—Page 242.

JURAT TO BILL FOR SEPARATION.

(A Jurat by the wife in the usual form.)

State of New-York, }
City and County of New-York, } ss.

L. M., of the city of New-York, being duly sworn, saith, that he has read the foregoing bill, and knows the contents thereof, and that the same is true, as he has been informed and verily believes.

(L. M., next friend.)

No. 322, Vol. II.—Page 243.

ORDER OF REFERENCE ON BILL FOR SEPARATION.

(Title.)

At, &c.

The bill in this cause being filed for the purpose of obtaining a separation between the complainant and defendant from bed and board, and the same having been taken as confessed by the defendant, or (the facts therein charged having been admitted by the answers of the defendant,) thereupon, on reading and filing an affidavit showing the regularity of the proceedings to take such bill as confessed, or (upon reading such bill and answer and notice of motion to that effect,) and on motion of Mr. V., of counsel for the complainant, it is ordered, that it be referred to one of the masters of this court, residing in the city of New-York, to take proof of the material facts charged in such bill, and to report such proof to this court, with his opinion thereon. [And upon such reference, the said master may take the

examination of the complainant on oath, as to any cruel or inhuman treatment alleged in the bill which took place when no witnesses were present who were competent to testify to the facts.]

No. 322 A, Vol. II.—Page 245.

DECREE FOR A SEPARATION.

(Title.)

At, &c.

This cause having been brought on to a hearing, upon the bill of complaint taken as confessed by the defendant, and upon the master's report therein, with the proofs thereto annexed, or (upon the pleadings and proofs,) and it appearing, thereupon, that defendant has been guilty of cruel and inhuman treatment of the plaintiff, by repeated acts of personal violence, so as to render it unsafe and improper for her to cohabit with him, or to be under his dominion or control: thereupon, on hearing Mr. &c., it is ordered, adjudged and decreed, and this court, by virtue of its power and authority, and of the statute in such case provided, doth order, adjudge and decree, that the complainant and defendant be separated from bed and board: provided, however, that the parties may, at any time hereafter, by their joint and mutual free and voluntary act, apply to the court for leave to be discharged from this decretal order. And it is hereby declared to be the duty of each of them to live chastely during their separation, and that it will be criminal, and an act void in law, for either of them, during the life of the other, to contract matrimony with any other person. And it is further ordered, that the complainant is entitled to, and shall have the care, custody and education of the infant son of the parties in the pleadings mentioned: provided, always, that this order, as to such custody and charge, may hereafter be modified, varied, or annulled, upon good cause shown. And it is further ordered and decreed, that the defendant pay to the complainant \$ a year, in half-yearly payments, to be computed from the date of this decree, to be applied towards the support and maintenance of the complainant and her said infant son, and give security to the assistant register of this court therefor, to be approved by a master of this court; (a) and the defendant is to pay to the complainant the costs of this suit to be taxed, and execution shall issue therefor according to the course of the court.

(a) If the cause is not ripe upon the facts for such a provision, a reference may be ordered. (*Barrere v. Barrere*, 4 Johns. C. R., 197. *Graves v. Graves*, 2 Paige, 62.)

No. 323, Vol. II.—Page 246.

PETITION FOR ALIMONY AND COSTS.

(Title.)

To, &c.

The petition of R. O., the above named complainant, respectfully sheweth, that your petitioner hath lately filed her bill in this court to obtain a divorce of the marriage solemnized between your petitioner and the above named defendant, on the ground of

That a subpoena has been duly issued, and has been served upon the said defendant, who has entered an appearance in such suit by his solicitor. That your petitioner is wholly destitute and unable to carry on such suit, and defray the costs and expenses attending the same, or to support herself during the continuance thereof. That the said defendant has a considerable personal estate, of the value, as your petitioner verily believes, of about \$ and that the annual income thereof is not less than the sum of \$ as will further appear by the affidavits hereto annexed.

Your petitioner therefore prays, that a reasonable sum may be allowed to her, and paid by the said defendant for her support during the pendency of this suit, and also to enable her to defray the costs and expenses attending the same. And, &c.

(Jurat.)

(Affidavits as to the estate of the party should be annexed, though not essential.)

No. 324, Vol. II.—Page 246.

ORDER OF REFERENCE AS TO ALIMONY.

(Title.)

At, &c.

Upon reading and filing the petition of the above named complainant, duly verified, and several affidavits thereto annexed, and upon hearing Mr. of counsel for the complainant, and Mr. of counsel for the defendant, it is ordered, that the said defendant pay to the next friend of the said complainant, or her solicitor, the sum of \$ in and towards defraying the costs and expenses of this suit, and that execution may issue therefor. And it is further ordered, that it be referred to one of the master's of this court, to examine and report what would be a reasonable sum to be allowed for the support of the said complainant during this suit, (*if children are left with her, add*) and of the children of the marriage now in her custody and charge.

No. 325, Vol. II.—Page 249.

PETITION FOR A COMMISSION OF LUNACY,

In Chancery.

In the matter of George G., }
 a supposed Lunatic. }

The petition of J. L. M., of the city of New-York, attorney at law, sheweth :—

That G. G., residing in the city of New-York, a merchant, and *who is justly indebted to your petitioner*, now is, and for the space of months last past has been a lunatic, and altogether unfit and unable to govern himself, or to manage his affairs, as by the affidavits hereto annexed appears.

Your petitioner therefore humbly prays, that a commission, in the nature of a writ *de lunatico inquirendo*, may issue to inquire of the lunacy of the said G. G., directed to such persons as to your honor shall seem meet. And your petitioner shall ever pray, &c.

AFFIDAVITS.

In Chancery.

In the matter of G. G., a supposed lunatic:

State of New-York, ss.

W. N., of the city of New-York, doctor of physic, maketh oath and saith, that he has attended the said G. G., as a physician for some time past, and that he, the said G. G., has for more than three months past labored under mental derangement, according to his judgment and belief. And, further, that he was present on or about the day of last past, when the said G. G. (*state some act of derangement*,) and further, that the said G. G. hath, on other occasions within such period, acted and spoken like an insane person. This deponent is well satisfied, that the said G. G. is unfit for the management of his concerns.

Sworn, &c.

(It is usual to have another affidavit of a servant, inmate of the family or friend.)

nearest convenient place to the residence of the said you diligently make inquisition in the premises ; and that you cause reasonable notice of the time and place by you appointed for that purpose to be given to the said and to such of his next of kin who are not petitioners in this matter as may be known to you, to whom it may be convenient to give such notice ; and that you send the inquisition which you shall thereupon make under your hands and seals, or the hands and seals of any three or more of you, and the hands and seals of those persons by whom the same shall be made, distinctly and plainly, and without delay, into our court of chancery, together with this writ.

And by the tenor of these presents we command our sheriff, of our county of aforesaid, that at certain days and places which you shall make known to him, he cause to come before you, or any three or more of you, so many and such good and lawful men of his bailiwick, as you shall direct, by whom the truth of the matters aforesaid may be better known and inquired into.

Witness, REUBEN H. WALWORTH, chancellor of our said state, at the city of Albany, the day of in the year one thousand eight hundred and thirty

Solicitor.

No. 328, Vol. II.—Page 253.

PRECIPE TO SHERIFF BY COMMISSIONERS.

By virtue of a commission in the nature of a writ *de lunatico inquirendo*, bearing date at the city of New-York, the 25th day of May, eighteen hundred and thirty-one, to us whose names are herein written directed to inquire if G. G., of the city and county of New-York, be a lunatic or not.

These are therefore to will and require you, to cause to come and appear before us, twenty-four honest and lawful men of the city and county of New-York aforesaid, on the 31st day of May instant, by four of the clock in the afternoon of the same day, at the City Hall of the city of New-York, then and there upon their oaths to inquire of the lunacy of the said G. G., and of all such matters and things as shall be given them in charge by virtue of said commission, and thereof fail not at your peril.

Given under our hands and seals, this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and thirty-one.

M. H. (SEAL.)

R. S. (SEAL.)

G. H. (SEAL.)

The Sheriff of the city and county of New-York.

Endorsed by the Sheriff.

The execution of this precept appears by the panel annexed.

J. S., Sheriff.

WARRANT TO PRODUCE LUNATIC.

By virtue of a commission in the nature of a writ of *de lunatico inquirendo*, under the seal of this court, bearing date at, &c., (*here insert the date of the commission*), to us whose names are here underwritten directed to inquire whether G. G., of the city and county of New-York, be a lunatic or not. These are to will and require you to produce before us, the said G. G., at the execution of the said commission, on the, &c., at, &c.

Given under our hands and seals this, &c.

NOTICE TO LUNATIC, AND TO NEXT OF KIN.

In Chancery.

In the matter of G. G., }
a supposed lunatic. }

Sir—The commission in the nature of a writ *de lunatico inquirendo*, issued and directed to us to inquire whether G. G., of the city of New-York, be a lunatic or not, will be executed on the day of at of the clock in the afternoon, at the City Hall, in the city of New-York.

(*Names of Commissioners.*)

No. 329, Vol. II.—Page 255.

SUBPOENA FOR WITNESSES.—ENGLISH FORM.

By virtue of a commission in the nature of a writ of *de lunatico inquirendo*, under the seal of the court of chancery of the people of the state of New-York, dated the day of to us whose names are here underwritten directed, to inquire whether G. G., of the city and county of New-York, be a lunatic or not; these are to will and require you that you personally be and appear before us, at on the day of at o'clock of the noon of that day, and there, upon your oath, to testify the truth, according to your knowledge, touching the lunacy of the said and of all such matters as shall be demanded of you by virtue of such commission. Hereof fail not at your peril. Given under our hands and seals this

(*Signatures and seals of the Commissioners.*)

No. 330, Vol. II.—Page 256.

OATH TO JURORS.

You shall well and truly inquire, touching the lunacy of G. G., and of all such matters and things as shall be given you in charge, by virtue of a commission issued out of the court of chancery, to inquire into the said lunacy and now here to be executed, and a true inquisition make, according to evidence. So help you God.

OATH TO WITNESSES.

The evidence you shall give, touching the lunacy (*or mental incapacity*) of G. G., and all such matters and things as shall be inquired of you, by virtue of a commission out of the court of chancery, to inquire into the said lunacy, (*or mental incapacity,*) now here to be executed, shall be the truth, the whole truth, and nothing but the truth. So help you God.

No. 331, Vol. II.—Page 257.

INQUISITION.

An inquisition taken at the _____ in the city and county of New-York, on the _____ day of _____ in the year of our Lord _____ before M. H., &c., commissioners, by virtue of a commission in the nature of a writ *de lunatico inquirendo*, under the seal of the court of chancery, to them directed and to this inquisition annexed, to inquire of the lunacy of G. G., upon the oaths of (*set forth the names of the jurors,*) good and lawful men of the said county, who being sworn and charged upon their oath, say, that the said G. G., at the time of taking this inquisition, is a lunatic, and does not enjoy lucid intervals, so that he is not sufficient for the government of himself, his messuages, lands, tenements, goods and chattels; and that he, the said G. G., hath been in the same state of lunacy from the _____ day of _____ but how or by what means the said G. G. became a lunatic, the jurors aforesaid know not, unless by the visitation of God. And the jury aforesaid, upon their oath further say, that whether the said G. G., being in the same condition, hath alienated any lands or tenements, as also what lands and tenements, goods or chattels, the jurors aforesaid know not. In testimony whereof, as well the said commissioners as the jurors aforesaid, have to this inquisition set their hands and seals the _____ day and year first above written.

(Names and seals of jurors.)

(Names and seals of commissioners.)

No. 332, Vol. II.—Page 257.

RETURN OF COMMISSIONERS.

The execution of this commission appears by the inquisition hereto annexed. Dated

(Signatures and seals of Commissioners.)

No. 333, Vol. II.—Page. 257.

ORDER FOR AN ISSUE UPON LUNACY.

Memorandum.—[The act of May 2, 1839, and the mode of making an issue to be tried by a jury, and the 67th Rule of the court, apply in terms to a cause only, and regularly at issue between parties. The chancellor may, I presume, adopt a system respecting cases of this description, similar to the provisions of the act. I state, however, the old practice as proper, until such a regulation is made.]

In the matter of G. G., lunatic.

At, &c.

Upon reading and filing the petition of G. G. above named, duly verified, praying for leave to traverse the inquisition taken on the execution of the commission in the nature of a writ *de lunatico, inquitrendo*, issued to inquire of his alleged lunacy, or that an issue be awarded to try the question of such lunacy, or for some other proper order in the premises, and on motion of Mr. _____ of counsel for the petitioner, it is ordered that an issue be made and settled to try the question, whether the said G. G. is a lunatic, or mentally incapable of managing his own affairs; that the said issue be tried at the next circuit court, to be held in and for the _____ or at some subsequent circuit court; that the counsel for the petitioner prepare such issue, and submit it to _____ the solicitor of _____ prosecuting the said commission; and that if they cannot agree upon the same, application be made to the court on any future motion day: and further, that if such issue be not prepared and served upon the opposite party in six weeks after a copy of this order, then this order shall be deemed to be discharged. (1 *Johns. C. R.* 603.)

No. 334, Vol. II.—Page 257.

FORM OF AN ISSUE.

[See *ante* No. 318, form upon a bill for divorce. There should be a count upon the fact of lunacy at the date of the inquisition, and another as to the lunacy at the previous time found in the inquisition, of its existence.]

No. 335, Vol. II.—Page 258.

PROVISIONAL ORDER FOR CUSTODY, &c.

At, &c.

Upon reading and filing the petition of duly verified, from which it appears that an inquisition had been taken on the day of last, whereby the above named was found a lunatic, and that upon his application an order had been made by this court, directing an issue to try the fact of such lunacy, and praying for the appointment of a committee for such lunatic, to act during the proceedings upon such issue. Thereupon, on motion, &c., it is ordered, that it be referred to one of the masters of this court, to appoint a proper person to be the committee of the person and estate of the said lunatic *ad interim*, and to take from such person proper security.

No. 336, Vol. II.—Page 258.

PETITION FOR A COMMITTEE.

In the matter of L. D., }
a lunatic. }

To, &c.

The petition of showeth, that in pursuance of an order of the day of last, made upon the petition of your petitioner, a commission in the nature of a writ *de lunatico inquirendo* was awarded and issued, directed to certain commissioners therein named, to inquire of the lunacy of L. D., of the city of New-York, who is the brother of your petitioner.

That the said commission was duly executed on the day of last, before all (*two of*) the commissioners named therein; and thereby it was found that the said L. D. is of unsound mind, and does not enjoy lucid intervals, so that he is not sufficient for the government of himself, his lands,

tenements, goods and chattels, and that he has been in the same state from the day of last past.

Your petitioner therefore prays, that (*he may be appointed the committee of the said lunatic's person and estate,*) it may be referred to one of the masters of this court, to inquire and certify who is or are the most fit and proper person or persons to be appointed committee or committees of the said lunatic's person and estate; or that your honor will make such further or other order in the premises as shall be just. And, &c.

(*Usual Jurat.*)

No. 337, Vol. II.—Page 258.

ORDER UPON PETITION FOR APPOINTMENT OF A COMMITTEE.

(Title.)

At, &c.

Upon reading and filing the inquisition in this matter, taken on the day of at the City Hall, in the city of New-York, before three commissioners appointed by this court to execute a commission in nature of a writ *de lunatico inquirendo*, issued out of and under the seal of this court, whereby it appears that the said L. D. is of unsound mind, and not sufficient for the government of himself, his lands, tenements, goods and chattels, (*and that he was seised of or well entitled to certain real and personal estate,*) and on reading and filing the petition of C. D., duly verified, praying that a committee of the person and estate of such lunatic may be appointed, and for such other or further order in the premises as should be just: Thereupon, on motion of Mr. H., of counsel for the petitioner, it is ordered, that it be referred to one of the masters of this court, residing in the city of New-York, to inquire and certify who is or are the most fit and proper person or persons to be appointed committee or committees of the person and estate of the said lunatic. And such master is also to inquire and certify, who is or are the heir at law and next of kin of such lunatic, to whom due notice of attending such master is to be given. And such master is further to ascertain and certify the nature and amount of the property and estate, real or personal, of such lunatic, and the annual income thereof, and also the amount of the bond which ought to be given by the committee of the estate of such lunatic, for the faithful performance of the trust committed to him, and the sufficiency of the persons proposed as the sureties of such committee; and further, such master shall ascertain and certify when such lunacy commenced; and at what expense, and by whom such lunatic hath hitherto been maintained, and what would be a proper allowance for the annual support and maintenance of such lunatic, regard being had to his circumstances and estate. And upon the coming in of the master's report, such further order shall be made as shall be just.

No. 333, Vol. II.—Page 259.

[This number is erroneous. The precedent intended is the same as No. 337, *ante.*]

No. 339, Vol. II.—Page 260.

MASTER'S REPORT AS TO COMMITTEE, &c.

To, &c.

In pursuance of an order of this honorable court made in the above matter, I, the subscriber, one of the masters of this court, residing in the city of New-York, to whom the execution of such order was confided, do report:—

That I have been attended upon the reference had before me by the solicitor of the petitioner prosecuting the commission issued herein, and also by A. M., as solicitor of J. B., the nearest of kin and heir at law of the said lunatic, and having considered the proposals laid before me, I am of opinion, and do so certify, that J. B., of the city of New-York, merchant, is a fit and proper person to be appointed the committee of the person and estate of the said lunatic. That the property of the said lunatic consists of certain real estate, &c. (*Statement of property, value and annual income.*) And I further report, that, in my opinion, the bond to be given by such committee, should be in the sum of \$ conditioned for the faithful performance of the trust committed to him. That the said J. B. proposed as his sureties J. R. and L. S., each of the city of New-York; that I have taken the usual affidavit of justification from each of them, and from this, (*as well as personal knowledge,*) I am of opinion that such bond executed by the said committee with them as his sureties, will be a sufficient security for the said lunatic. And I further report, that from the inquisition produced to me, or, (from the evidence taken before me,) I find that the lunacy of the said commenced about the day of and also I find that such lunatic hath been supported since that period by J. B., of the city of New-York, his brother. And I further report, that the sum of \$ would be a proper annual allowance for the support and maintenance of such lunatic, regard being had to his circumstances and estate. All which, &c.

Dated,

No. 340, Vol. II.—Page 261.

ORDER APPOINTING A COMMITTEE UPON MASTER'S REPORT.

In the matter of D. B., }
a lunatic. }

At, &c.

Upon reading (*and filing*) the report of D. C., one of the masters of this court, bearing date the day of instant, (and which by an order of the day of instant, has been duly confirmed,)(*a*) and on motion of M. H., of counsel for J. B., it is ordered, that such report be, and the same is hereby confirmed; and further, that the custody of the person of the said D. B., the lunatic, and the care and management of his estate, be granted and committed to J. B., in such report mentioned, upon his executing and filing with the (*register*) of this court, a bond with C. M. and L. D., his sureties, in the sum of \$ mentioned in such report; such bond to be acknowledged or proven in the same manner as is now provided by law for taking the proof or acknowledgment of conveyances of real estate, and to be approved of by the said master, with his written approval endorsed thereon; and until such security shall have been perfected, the said J. B. is not to interfere in the affairs of the lunatic in any manner whatsoever, as committee or otherwise. And in default of such bond being filed within ten days from the date of this order, it is ordered, that it be referred to the said master, to approve of some other proper person or persons, to be the committee or committees of the estate of the said lunatic, in place of the said J. B.; and in that case, after the master shall have made his report, such further order shall be made as may be just. And it is further ordered, that the said committee be allowed the annual sum of \$ for the support and maintenance of the said lunatic; and that the costs of the proceedings in this matter be paid by such committee, out of the funds which shall come to his hands, and may be allowed upon the first passing of his accounts.

No. 340 A, Vol. II.—Page 261.

COMMISSION TO COMMITTEE.

[A practice sometimes prevails, and I understand is generally adopted in Albany, to issue a commission to the committee. This agrees with the English course where letters patent are granted under the great seal,

(a) See the remarks in the text, Vol. II. page 260.

(*Shelford*, 130.) It has not been the course, however, in the city of New-York, and I should suppose the order was sufficient. I annex, however, the form.]

The People of the State of New-York: To all to whom these presents shall come or may concern, Greeting:—

Whereas by a certain inquisition taken at the _____ in the year one thousand eight hundred and thirty _____ by virtue of our commission in the nature of a writ *de lunatico inquirendo* in that behalf duly made and issued, to inquire, among other things, whether _____ was and is a lunatic, and was and is incapable of conducting _____ own affairs in consequence of such lunacy, it is, among other things, found that the said _____ at the time of taking the said inquisition, and for _____ previous thereto, was and has been incapable of conducting _____ own affairs in consequence of such lunacy, as by the said inquisition remaining of record in our court of chancery, may more fully appear; for the care and custody of whom, and for the management of whose estate, it belongs to us in our court of chancery to provide. And whereas sufficient security is given to us on behalf of the said _____ as is customary in such cases: Now, therefore, know ye, that we have given, granted and committed, and by these presents do give, grant and commit, unto the said _____ the care and custody of the person, and the possession, care and management of the estate, as well real as personal, of the said _____ during our pleasure, to be signified in our court of chancery. And the said _____ is hereby required, within six months from the date of these presents, to return and file in the office of the register of our court of chancery, in the city of Albany, a just and true inventory, under oath, of the whole real and personal estate of the said _____ stating the income and profits thereof, and the debts, credits and effects of the said _____ so far as the same shall come to the knowledge of the said _____ and that out of the said estate, or the rents, issues and profits thereof, _____ provide for the maintenance, sustenance and support of the said _____ and _____ family; and that annually, [see 154th Rule, 1837-1839,] the said _____ file in the office of the said register, an account, under oath, of the management of _____ said trust, and of any other property or effects belonging to the said estate, which _____ shall have discovered after the filing of the said inventory. And the said _____ is further required to abide by and obey all and every such order or orders in the premises as may hereafter be made in our said court of chancery, and to render a full and just account of the execution of the said trust, and of the estate, property and effects which shall have come to _____ hands, when and as often as required by our said court.

Witness, REUBEN H. WALWORTH, chancellor of our said state, at the city of Albany, the _____ day of _____ in the year one thousand eight hundred and thirty _____

Solicitor.

No. 341, Vol. II.—Page 265.

PETITION FOR SALE OF REAL ESTATE OF LUNATIC.

In the matter of A. B., }
 a lunatic. }

To, &c.

The petition of C. M., the committee of the person and estate of the above named lunatic, respectfully sheweth:—That by an inquisition taken on the day of in the year the above named A. B. was found a lunatic, so as to be incapable of the management of his property and concerns; and that by an order made in the above matter on the day of your petitioner was appointed the committee of such lunatic. That in and by a report of S. C., one of the masters of this court, also made in the above matter, and dated the day of in the year it was found and reported that the personal estate of such lunatic consisted of (*state the items of personal estate and value,*) and that the real estate of such lunatic consisted of (*state real estate and value.*) And your petitioner further shows that he has not discovered any other personal or real estate to which such lunatic is entitled.

Your petitioner further shows, that he has been applied to by various persons, alleging themselves to be creditors of the said lunatic, for the payment of the debts so alleged to be due to them, and among others, by J. B., of the city of New-York, claiming to be a creditor by bond in the sum of \$ and by C. R., of the same place, claiming to be a creditor for money lent and advanced to and for the use of such lunatic, and for various articles supplied to him, in the sum of \$ that other debts appearing to be due by such lunatic have come to your petitioner's knowledge, that is to say, (*state the debts,*) making in the whole the sum of \$ or thereabouts, which your petitioner believes is justly due from him, and greatly exceeding the value of his whole personal estate, which is insufficient to discharge the same.

And your petitioner further shows, that of the said personal estate which came to the hands of your petitioner, he has paid and applied the sum of \$ in and towards the payment of a debt due for the support and clothing of such lunatic, and also the sum of \$ to J. R., the solicitor who prosecuted the commission issued in this matter, for his costs.

Your petitioner therefore prays, that authority may be given him by this honorable court, to mortgage or sell so much of the real estate of such lunatic as shall be necessary for the payment of such debts, or of such of them as shall be duly proven, and of any other debts shown to exist.

And your petitioner, &c.

(Usual Jurat.)

At, &c.

committee of A. B., a mortgagee of the real estate of the petitioner, it is the duty of the masters of this court, to inquire into such petition; that he is to consider the representations therein made, and which if either, of the debts of such petitioner should be proper to be sold. And if the real estate of the petitioner should die intestate, and is to

in this matter, and dated
master named in such

City of New-York, would
and intestate, and I caused
by them on the reference
amount and particulars of
have consisted of (*state*
\$ and that out of
 in discharge of a
lunatic, and also the sum
commission issued in this
the sum of \$ and
lunatic is, at the present

One of the following debts
named, that is to say,
the amount of such debts

be most advisable to sell
consists of the house and

lot known as number street, in the ward of the city of New-York. That from the testimony taken by me, it appears that the value thereof is about the sum of \$ which will pay and discharge all the debts of the said lunatic, and all costs of the proceedings, and leave a trifling balance, if any. That the said J. B. and R. B. have approved of the sale of such portion of the said real estate, as the most advisable mode of raising the amount of the said debts.

All which, &c.

No. 344, Vol. II.—Page 266.

PETITION ON THIS REPORT.

To, &c.

The Petition of, &c.

That under and by virtue of an order of this court, dated, the, &c., the master to whom it was referred has made a report, dated, &c., and reporting that, &c., (*substance of report as to property to be sold.*)

Your petitioner therefore prays, that an order may be entered confirming such report, and directing a sale of the premises mentioned therein, for the purpose of paying the debts of such lunatic.

ORDER TO SELL THE REAL ESTATE.

At, &c.

Upon reading and filing the report of one of the masters of this court, dated the day of made in pursuance of an order of this court, dated the day of and it satisfactorily appearing to the court, that the personal estate of the above named lunatic is not sufficient for the payment of his debts, and that of the amount of such personal estate which has come to the hands of the committee of such lunatic, the sum of \$ has been applied for the purpose of paying a debt of such lunatic, and such personal estate appearing therefore to have been applied for the purpose of paying debts as far as the circumstances of the case rendered proper. Thereupon, on motion of it is ordered, that the said C. M., committee of the said lunatic be, and he is hereby authorized and directed to sell the lot of land and premises mentioned in such report, for the purpose of paying and discharging the debts of such lunatic therein set forth. That such sale may be made at public auction or private sale, as the said committee shall see fit. That he report to this court, on oath, the terms and conditions of such sale, with the name of the proposed purchaser, when such further order shall be made as may be just.

No. 345, Vol. II.—Page 286.

REPORT OF SALE BY COMMITTEE.

To, &c.

In pursuance of an order of this court made in the above matter, and dated the day of I, the subscriber, the committee of A. B., the lunatic, respectfully report:—

That I have entered into an agreement, subject to the approbation of this court, with J. S., of the city of New-York, merchant, for the sale to him of the lot of land and premises mentioned in such order, and belonging to the said lunatic. That the price agreed to be given for the same is the sum of \$ payable upon the delivery of the deed for the same; and that such lot is, as I am informed and believe, bounded and described as follows, to wit: *All, &c.*

All which I respectfully submit.

(*Usual Jurat.*)

ORDER UPON THIS REPORT.

*(In the matter, &c.)**At, &c.*

Upon reading and filing the report of C. M., committee of the above named lunatic, made upon oath, and dated the day of setting forth that he had entered into an agreement with J. S., of the city of New-York, for the sale to him of the lot of land belonging to such lunatic therein mentioned and described, for the price or sum of \$ payable on the delivery of the deed for the same. Thereupon, on motion of Mr. solicitor for the said committee, it is ordered that such report be, and the same is hereby confirmed. And it is further ordered, that the said C. M., the committee aforesaid, execute to such purchaser a good and sufficient conveyance of such lot of land and premises, upon receiving the said sum of \$ the purchase money aforesaid. That he apply the said purchase money in discharge of the debts due by such lunatic, as set forth in the report of the master, dated the day of and that he pay the same, without giving any preference to such debts as are founded on sealed instruments.

[And it is further ordered, that before such purchase money be paid to the said committee, he give additional security by a bond to be executed with two sureties, and to be approved of by one of the masters of this court, and filed with the clerk, conditioned for the faithful application of the proceeds of such sale herein directed, and to account for the same whenever required.]

No. 346, Vol. II.—Page 266.

DEED OF COMMITTEE OF LUNATIC.

This indenture, made this day of in the year between C. M., committee of the person and estate of A. B., a lunatic, duly appointed by the court of chancery of the state of New-York, of the first part, and J. S., of the city of New-York, of the second part. Whereas, at a court of chancery held for the state of New-York, at the city of New-York, on the day of it was, among other things, in substance ordered, that the party hereto of the first part be, and he thereby was authorized and directed to sell the lot of land and premises herein mentioned and hereafter described, for the purpose of paying the debts of such lunatic. And whereas an agreement was entered into by and between the parties to this conveyance, for the sale of such lot of land and premises to the party of the second part, for the price or sum of \$ which agreement for such sale was reported to the said court by the party of the first part; and thereupon, by an order bearing date the day of it was ordered, that such report be, and the same was thereby confirmed; and it was also ordered, that the said party of the first part, execute to the party of the second part, a good and sufficient conveyance for such lot of land and premises, upon receiving the said sum of \$ Now, this indenture witnesseth, that the said party of the first part, in consideration of the premises, and in virtue of the orders of the said court of chancery herein in part recited, and of the statute in such case provided, and also in consideration of the sum of one dollar, &c. (*Usual form of Deed.*)

No. 347, Vol. II.—Page. 272.

NOTICE OF APPEARING DEFENDANTS AND OF SOLICITORS.

(Title.)

Take notice, that the following are the defendants who have answered in this cause, and to whose answers replications have been filed, and who have a right to take testimony, and also the solicitors by whom they respectively have appeared. A. M., by B. R., his solicitor, &c.

Yours, &c.

No. 348, Vol. II.—Page 273.

ORDER FOR SETTLING AN ISSUE.

At, &c.

An application being now made, on behalf of the complainant, for an issue to try the facts in dispute in this cause by a jury, and the cause being in readiness for the taking of proofs against all the defendants: Thereupon, on hearing Mr. of counsel for the complainant, and Mr. of counsel for the defendants, it is ordered, that issues be awarded, to try by a jury the matters in controversy in this cause. That such issues be in the form of the following interrogatories, to wit:

First, Was a valuable consideration paid by the defendant, J. M., to S. R., named in the pleadings, for the lot of land conveyed to him by deed, dated the day of and what was such consideration?

Second, &c.

And it is further ordered, that the defendant, J. M., is to be considered as holding the affirmative of such first issue, and the complainant the negative, &c.

No. 349, Vol. II.—Page 274.

ORDER OF REFERENCE TO SETTLE ISSUES.

At, &c.

[Follow the preceding precedent to the word *cause*. Then add:] And it is further ordered, that it be referred to one of the masters of this court, to settle the form of the issues to be tried between the complainant and the defendant, in the manner directed by the 67th rule of this court, and to report with all convenient speed.

No. 350, Vol. II.—Page 274.

REPORT AND INTERROGATORIES AS TO ISSUE.

Before the Chancellor.

J. B. M. *et al.* }
v. }
J. C. and E. C. }

To the Chancellor of the State of New-York.

In pursuance and in virtue of an order of this court made in this cause, dated the day of 1839, by which, among other things, it is

ordered, that it be referred to me, the subscriber, one of the taxing masters of said court, residing in the city of Albany, to look into the pleadings in this cause, to settle the form of the issue or issues to be tried between the complainants and the defendants (*or, and the defendant, A. B.,*) in the manner directed by the 67th rule of this court; and that I inquire and report in what court and county it would be most for the convenience of the said parties and their witnesses, that the said issue or issues should be tried.^(a)

I, the subscriber, the master named in said order, do respectfully report, that I have been attended by the counsel for the respective parties, and have looked into the pleadings in this cause, and have settled the following as the proper interrogatories to be answered by a jury, which answers will determine every material point or question of fact put in issue by said pleadings, to wit :

First. Were the complainants authorized by C. C. & Co. to sell the sixty-three barrels of flour mentioned in the pleadings in this cause, without receiving payment therefor, at or previous to the time of the delivery of the same to the purchaser ?

Second. When was the settlement of the accounts between the complainants and C. C. & Co. in the pleadings mentioned made ?

Third. On said settlement, did said defendants claim that said complainants were responsible for all flour sold by said complainants for said C. C. & Co., as for so much cash received for the use of said C. C. & Co.

Fourth. At the time of said settlement, did said complainants assume the debt against D. B. for said sixty-three barrels of flour, and take the risk in regard thereto ?

I do further report, that the complainants are to be considered as holding the affirmative of the first and second of said questions or issues, and the defendants of the third and fourth of said questions or issues on the trial.

I do further report, that upon the affidavits produced by the respective parties, I am of opinion it will be most for the convenience of said parties and their witnesses, that said issues should be tried in "the Superior Court of the city of New-York."

All which is respectfully submitted.

Albany,

1839.

(a) This was a special clause, not usually embraced in the orders. It was as follows :—

"And it is further ordered, that the said master inquire and report in what court and county it would be most for the convenience of the said parties and their witnesses, that the said issue or issues so to be framed should be tried, and that the said master receive on this reference such affidavits relative to the proper venue for the trial of such issue or issues, as may be furnished by the respective parties to this suit."

COSTS ON FORECLOSURE.

*In Chancery.**Before the Vice-Chancellor of the Third Circuit.*

L. F. and G. W. R.,

v.

K. V. R. L., E. V. R. L., A. A. L., K. V. R. L., jr.,
 E. O. L., Alb. Ins. Com., J. V. Z., H. L., G.
 Y. L., J. B., F. P., S. S., P. McC., E. P., W.
 O., and G. C. E.

Complainants' Costs.

<i>Counsel's Fees.</i> Retainer, (B. F. B.)	-	-	-	5 00
Perusing, amending and signing bill,	-	-	-	2 50
Motion for appt. of L. H. S., guardian, do. for A. K., do. for J. V. B.,	-	-	-	7 50
Two counsel arguing cause on the pleadings, (a)	-	-	-	16 00
Counsel arguing before master on reference, do. on settlement of report,	-	-	-	5 00
Two counsel arguing cause on equities reserved, &c. (a)	-	-	-	16 00
Perusing and settling final decree,	-	-	-	2 50
<i>Solicitor's Fees.</i> Retainer, (J. R.,)	-	-	-	3 00
Draft and copy request for clerk of supreme court to search for judgments, folio 1, at 35 cents, viz. 28+7	-	-	-	35
The like for clerk of Albany county to search for judgments, in common pleas, mayor's court, and justices' transcripts; and for mortgages, loan office mortgages, collectors' bonds and notices of suits in equity, including description of the premises, folio 3,	-	-	-	1 05
Drawing bill, folio, at 23 cents,	-	-	-	23 60
Engrossing with schedule folio — fair copy to keep and abbreviation for use of counsel, at 24 cents per folio, (b)	-	-	-	-
Drawing and engrossing notice of lis pendens to file in clerk's office of Albany county, folio 3, at 42 cents, 28+14,	-	-	-	1 26
Drawing affidavit of having filed same, folio 2,	-	-	-	56
Engrossing affidavit with notice annexed, folio 5,	-	-	-	70
Drawing subpoena, folio 2,	-	-	-	56
Engrossing four copies to seal, at 28 cents each,	-	-	-	1 12

(a) In this case there was an actual litigation upon the merits, and two counsel. On a bill taken as confessed, the fee is, \$2 50

(b) This is the most convenient mode of drawing the item. It usually is drawn as follows :

Engrossing with schedule, say 20 folio, at 14 cents,	-	-	-	2 80
Fair copy to keep, at 7 cents,	-	-	-	1 40
Abbreviation of bill, at 3 cents,	-	-	-	60
Or, 20 folio, at 24 cents, \$4 80	-	-	-	\$4 80

Sixteen copies to serve, at 14 cents each, - - - -	2 24
Serving same on sixteen defendants, at 75 cents each, - -	12 00
Sixteen notices of object of suit to serve, and service, at 3s. each, -	6 00
Engrossing four copies, folio 3 each, to annex to subpoenas and file with clerk, at 14 cents per folio, 12 folio, - - - -	1 68
Fair copy of notice to keep, folio 3, - - - -	21
Drawing and engrossing 12 admissions of service of subpoena and notice on 12 defendants, folio 1 each, - - - -	5 04
Drawing and engrossing affidavit of service on four defendants, folio 2, - - - -	84
Drawing and engrossing petition for appointment of guardians, ad litem, of four infant defendants, folio 6, - - - -	2 52
Drawing consent of L. H. S. to act as guardian for two oldest in- fants, folio 1, and engrossing, - - - -	42
Drawing his affidavit and engrossing, folio 1, - - - -	42
The like consent and affidavit of A. K. - - - -	84
The like consent and affidavit of J. V. B. - - - -	84
Drawing and engrossing affidavit verifying petition, folio 1, -	42
Attending vice-chancellor with petition, - - - -	1 00
Drawing order, folio 3, appointing L. H. S. guardian, and attend- ance on entering, - - - -	1 34
Copy of order to serve on S., 21, service, 25, - - - -	46
The same for A. K., guardian, - - - -	1 80
The same for J. V. B., guardian, - - - -	1 80
Copy of bill for A. V. V., solicitor for V. Z. and L., folio 113, inclu- ding schedule, - - - -	7 91
Draft of order that they answer in forty days, folio 2, - - - -	56
Attending register on entering order, 50, copy to serve, 14, ser- vice, 25, - - - -	89
Draft, and engrossing admission of service of copy bill and notice of order to answer, folio 1, - - - -	42
The same for J. T. B. V. V., solicitor for K. V. R. L. - - - -	9 78
The same for L. H. S., guardian ad litem, - - - -	" "
The same for A. K., guardian ad litem, - - - -	" "
The same for J. V. B., guardian ad litem, - - - -	" "
The same for J. E. L., solicitor for Alb. Ins. Com., - - - -	" "
Drawing and engrossing affidavit of residence of seven defendants, folio 2, - - - -	84
Drawing order that they appear in ten days, folio 2, and attending register on entering order, - - - -	1 06
Drawing and engrossing affidavit, that said seven defendants had not appeared according to the exigency of said order, folio 2, -	84
Drawing order that bill be taken as confessed by them, folio 2, and attending register on entering order, - - - -	1 06
The same as four last lines, as to defendant G. Y. L., - - - -	3 80
Drawing and engrossing consent that bill be taken as confessed by V. Z. and L., folio 1, - - - -	42

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Drawing order thereon, folio 2, and attending register on entering same,	1 06
The same as to K. V. R. L.,	1 48
The same as to Alb. Ins. Com.,	1 48
Abbreviating answer of L. H. S., guardian, folio 14,	42
The like of A. K., guardian, folio 14,	42
The like of J. V. B., guardian, folio 5,	15
Drawing and engrossing affidavit of regularity, folio 2,	84
Drawing six notices of hearing on pleadings, copies and service,	2 25
Drawing and engrossing six admissions of service of notice, folio 1 each,	2 52
Engrossing six copies of notices to annex to admissions and file, folio 2 each,	1 68
Drawing note of the issue for clerk and service,	37
The same as two last items to clerk to take papers to court,	37
Copies of bill and answer for court, 146 folios,	10 22
Drawing case, folio 5, \$1 40, fair copy to keep, with abbreviation of pleadings, folio 30, \$2 10, and fair copy for vice-chancellor, \$2 10	5 60
Drawing points and minutes of a decree the complainants' considered themselves entitled to, folio 7,	1 96
Copy to keep, copy for vice-chancellor, copy for complainants' counsel, and six copies for opposing counsel, 9 copies, at 49 cents each,	4 41
Drawing brief for counsel on argument,	2 00
Solicitor attending court on argument of cause,	5 00
Drawing interlocutory decree for reference and sale, folio 20,	5 60
Fair copy to keep and attending clerk on entering,	1 90
Copy of decree for master, \$1 40, service, 25 cents,	65
Six summonses for defendants and service, at 3s. each,	2 25
Drawing and engrossing six admissions, folio 1 each,	2 52
Six copies of summonses to endorse admissions upon, folio 3 each, 42 cents each,	2 52
Attendance on reference litigated,	1 00
Same as four last items on settling report,	8 29
Drawing brief for counsel on taking and stating account of amount due on debts of A. A. L.,	2 00
Drawing charges of complainants, folio 20, at 22 cents, and 9 copies at 7 cents each,	17 00
Drawing instructions for examining eight witnesses before master, at 25 cents each,	2 00
Drawing, and copy to file of affidavit of attendance of witnesses, folio 3, at 42 cents per folio,	1 26
Copy of master's report to keep, folio 40, including schedules,	2 80
Drawing affidavit of printing notice of sale, folio 2,	56
Engrossing to file with notice annexed, folio 4, 56 cents,	56
Same as two last items of affixing notice of sale,	1 02

Drawing conditions of sale, folio 5,	-	-	-	-	1	40
Engrossing with notice annexed, folio 7,	-	-	-	-		98
Drawing and copying of deed for premises, folio 15, at 35 cents,	-	-	-	-	5	25
Fair copy of master's report of sale, to keep, folio 8,	-	-	-	-		56
Drawing six notices of hearing on equities, reserved copies and service,	-	-	-	-	2	25
Drawing and engrossing six admissions of service of same, folio 1 each,	-	-	-	-	2	52
Engrossing six copies of notices to annex to admission, and file, folio 2 each,	-	-	-	-	1	68
Drawing note of issue for clerk and service,	-	-	-	-		37
The same as two last items of notice, to clerk to take papers to court,	-	-	-	-		37
Copies of pleadings, former decree and two reports for court, folio 214,	-	-	-	-	14	98
Drawing case, folio 5,	-	-	-	-	1	40
Copies for vice-chancellor, for counsel, and to keep, 15 folios in all, at 7 cents,	-	-	-	-	1	05
Two copies of abbreviation of pleadings to annex, folio 25 each,	-	-	-	-	3	50
Drawing points and minutes of decree the complainants think themselves entitled to, folio 6,	-	-	-	-	1	68
Nine copies, for vice-chancellor, for counsel, for six opposing counsel, and to keep, 54 folios in all, at 7 cents,	-	-	-	-	3	78
Drawing brief for counsel on argument,	-	-	-	-	2	00
Solicitor attending court on argument of cause,	-	-	-	-	5	00
Drawing and fair copy of decree, folio 9, at 35 cents, and attending clerk on entering,	-	-	-	-	3	65
Copy same to serve on master, and service, 88, the like on purchaser,	-	-	-	-	1	76
Drawing and engrossing receipt for costs, folio 1,	-	-	-	-		42
The like for sum decreed to be paid to complainants,	-	-	-	-		42
Drawing and engrossing certificate of deposit of surplus, folio 1,	-	-	-	-		42
Copy, costs to be taxed and filed,	-	-	-	-	1	00
Six copies to serve on defendants, guardians and solicitors,	-	-	-	-	6	00
Six notices of taxation, copies and services, 3s. each,	-	-	-	-	2	25
Drawing and engrossing 6 admissions of service of notice of taxation, folio 1 each,	-	-	-	-	2	52
Draft and engrossing affidavit of disbursements, folio 2,	-	-	-	-		84
Attendance upon vice-chancellor on taxing costs,	-	-	-	-		50
Notices to three guardians and one solicitor, to file their costs,	-	-	-	-	1	50
Drawing and engrossing certificate, of filing costs and of amount,	-	-	-	-		42
Draft and engrossing four admissions of service of notice, folio 1 each,	-	-	-	-	1	68
Attendance on taxing costs of three guardians and one solicitor,	-	-	-	-	2	00
Notice to register to enrol decree and service,	-	-	-	-		37
Draft and engrossing certificate of enrolment, folio 1,	-	-	-	-		42
Copy master's report on distribution, to keep, folio 20,	-	-	-	-	1	40
Drawing, and fair copy of order to confirm same, folio 2, and attending clerk on entering same,	-	-	-	-	1	20

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<i>Master's Fees.</i> Signing summons, - - - -	13
Attendance on reference, (litigated,) \$3, three adjournments \$3, -	6 00
Swearing 8 witnesses, 8s., marking 13 exhs. 78, - - -	1 78
Computing amount due on two mortgages, - - -	2 00
Signing summons to settle report, - - - -	12
Drawing report, folio 26, - - - -	5 20
Drawing schedule, folio 14, - - - -	1 40
Attendance to settle report, litigated, - - - -	3 00
Engrossing, report and schedule to file, folio 40, - - -	4 00
<i>Disbursements.</i> Fourteen oaths in progress of cause, - -	1 75
Other disbursements in progress of cause, to wit, (<i>specify terms</i>), -	
Sergeant's fees on filing bill 1s., on two hearings, 4s. each, -	1 13
<i>Register's Fees.</i> Filing bill, - - - -	4
Entering cause in minutes of causes, folio 1, - - -	8
Entering award of subpoena, 14, 4 seals, 32, - - -	46
Filing subpoena, notices of object of suit, admissions and affidavits of service, affidavits of residences and drafts of orders for defendants to appear, in all 23 papers, at 4 cents each, - -	92
Entering and copy of 2 orders to appear, folio 2 each, - -	56
Filing petition, 3 consents, 4 affidavits, 3 drafts of orders, - -	44
Entering minutes of orders in rough minutes, folio 1 each, -	24
Entering and copying 3 orders, folio 3 each, - - -	1 20
Filing 6 affidavits, 6 drafts of orders, entering and copying 6 orders to answer, folio 2 each, - - - -	2 16
Filing 2 affidavits, 2 drafts of orders, entering and copy 2 orders pro confesso, folio 2 each, - - - -	88
Filing 3 consents, 3 drafts of orders, entering and copy 3 orders pro confesso, folio 2 each, - - - -	1 08
Filing notice of issue, and entering cause upon the calendar, for court and bar, - - - -	14
Filing notice, search, taking papers in cause into court, - -	23
Marking 21 papers read on hearing of cause, at 5 cents each, -	1 05
Entering memoranda of same in rough minutes, folio 2, - -	16
Entering decision in rough minutes, folio 4, - - -	32
Filing draft, entering and copying interlocutory decree, folio 20, -	2 84
Filing 13 papers, - - - -	53
Filing notice of the issue, and entering cause on the calendar for court and bar, - - - -	14
Filing notice, search, and taking papers into court, - -	23
Marking 24 papers read on final hearing, at 5 cents each, - -	1 20
Entering memoranda of same in rough minutes, folio 2, - -	16
Entering decision in rough minutes, folio 5, - - -	40
Filing 14 papers, - - - -	56
Filing draft, entering and copy final decree, folio 10, - -	1 44
Filing costs, certificate of taxation, and notice to enrol decree, -	12
Drawing history of proceedings in cause, folio 5, - - -	75
Engrossing same with interlocutory and final decree, folio 25, -	3 50

Examining same, taking to chancellor for signature, and filing,	-	69
Certificate of enrolment,	-	14
Filing final report of master, and 15 papers annexed,	-	64
Filing draft of order, confirming report nisi, entering and copying same, folio 2,	-	82
Certificate of deposite of surplus proceeds,	-	14
“ “ filing costs and of enrolment,	-	14

COSTS IN PARTITION.

*In Chancery.**Before the Vice-Chancellor of the Seventh Circuit.*

J. M. S. and H. his wife,

v.

N. S., Z. W. C. and E. F. S. his wife, C. T. S.,
 L. B., C. H. S., W. E. S., T. W. and M. his
 wife, G. F. and C. his wife, H. B., D. S. B.,
 P. B.; and D. S. R., E. M. R., T. B. R., R. S.
 R., and C. M. R.; which five last named de-
 fendants are infants.

Complainant's Costs—in partition.

Retaining fee for solicitor,	-	3 00
Retaining fee for counsel, (L. H. S.)	-	8 00
Drawing bill, folio 64, at 28 cents,	-	17 92
Engrossing same to file at 14 cents, 8 96; fair copy to keep at 7 cents, 4 48,	-	13 44
Counsel perusing, amending and signing bill,	-	2 50
Commissioner taking jurat, 12; clerk filing bill and jurat, 8,	-	20
Clerk entering cause in minutes of causes, folio 2, 16,	-	16
Sergeant's fee,	-	12
Drawing notice of lis pendens, to file with clerk of Seneca county, folio 15,	-	4 20
Engrossing same to file, 2 10; clerk filing and entering same, 18,	-	2 28
Drawing, engrossing and filing like notice in Cayuga county,	-	6 48
The like in every respect in Oswego county,	-	6 48
The like in every respect in Onondaga county,	-	6 48
Drawing subpoena, folio 3, 84; engrossing 5 copies, 2 10; five seals, 40,	-	3 34
Nineteen copies to serve, at 21 cents each,	-	2 99
Serving subpoena on thirteen defendants, at 75 cents each,	-	9 75
Drawing affidavit of service on W. and wife, folio 3, 84; engrossing, 42; oath, 12,	-	1 38
The like affidavit of service on Z. W. C. and three others,	-	1 38
The like affidavit of serving subpoena on N. S.	-	1 38
The like affidavit of service on P. B.	-	1 38

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The like affidavit of service on E. M. and C. M. R., at Syracuse, -	1 38
The like affidavit of service on the other three infants at Tioga county, - - - - -	1 38
Drawing affidavit to ground order of publication against the non-resident defendants, folio 4, - - - - -	1 12
Engrossing same, 56; oath, 12, - - - - -	68
Solicitor attending vice-chancellor, on motion for order, 1 00; counsel fee on do. 2 50, - - - - -	3 50
Drawing order, folio 11, 3 08; clerk filing order and affidavit, 12, -	3 20
Entering order, 88; entering in rough minutes on decision, 8, -	96
Certified copy of order, 66; solicitor attending on entering order, 50,	1 16
Five copies of order for publishers, 77 cents each, -	3 85
Drawing affidavits to ground order to amend bill and order of publication, folio 7, - - - - -	1 96
Engrossing same, 98; two oaths, 25, - - - - -	1 23
Solicitor attending vice-chancellor on motion, 1 00; counsel fee on do., 2 50; clerk entering in rough minutes, 8, -	3 58
Drawing order, folio 3, 84; clerk filing affidavits and draft order, 12,	96
Entering same in the minutes, 24; certified copy, 18; solicitor attending clerk on entering, 50, - - - - -	92
Clerk filing five subpoenas and six affidavits of service, - - - - -	44
Drawing order that W. and wife appear in ten days, folio 3, 84; clerk filing, 4, - - - - -	88
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Sir—Please to take notice that the bill of costs of which the preceding is a copy, will be taxed by Julius Rhoades, Esq., taxing master of the third circuit, at his office in Stanwix Hall, in the city of Albany, on the day of November instant, at ten o'clock in the forenoon of that day.

Dated Skaneateles, November 1834.

Yours, &c.

L. H. S., *Solicitor for Complainants.*

To

Esq.

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THE COURT OF CHANCERY

At a Court of Chancery, held for the state of New York, at the city of New York, on the third day of June, one thousand eight hundred and forty.

Present : *Reuben H. Walworth*, Chancellor.

Pursuant to the directions of the act of the fourteenth of May, one thousand eight hundred and forty, entitled "An act to reduce the expense of foreclosing mortgages, in the Court of Chancery," and for the purpose of carrying into effect the provisions of that act, it is ordered that the one hundred and thirty fourth, and one hundred and thirty sixth rules of this Court be amended so as to read as follows :

RULE 134.

If a bill to foreclose a mortgage be taken as confessed, or the right of the complainant as stated in the bill is admitted by the answer, he may have an order of course, referring it to a master to compute the amount due to the complainant, and to such of the defendants as are prior incumbrancers of the mortgaged premises, and to examine and report whether the mortgaged premises can be sold in parcels, if the whole amount secured by the mortgage has not become due ; and if the defendant is an infant and has put in a general answer by his guardian, or if any of the defendants are absentees, the complainant may have a similar order of course referring it to a master to take proof of the facts and circumstances stated in the complainant's bill, and to examine him on oath as to any payments which have been made, and to compute the amount due on the mortgage, preparatory to the application for a decree of foreclosure and sale. Where the bill is taken as confessed against all of the defendants, or where no answer has been put in by any of them denying any material matter set forth in the bill, so as to require the filing of a replication, the complainant after the cause is in readiness for hearing as to all the defendants, may apply for a final decree on any regular motion day, either in vacation or during the term, upon due notice to such of the defendants as have appeared in the suit ; and without putting the cause upon the calendar. Where

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a bill of foreclosure has been taken as confessed against any of the defendants, the complainant, at the hearing or when he moves for a decree, must show by affidavit, or otherwise, whether it has been so taken as confessed against any of the defendants as absentees, who have not appeared in the suit; and if it has, he must produce the master's report as to the proof of the facts and circumstances stated in the bill, and of the examination of the complainant on oath as to any payments which have been made. And in all foreclosure causes the complainant, at the hearing or when he moves for a decree, must show by affidavit, or by the certificate of the clerk of the county in which the mortgaged premises are situated, that a notice of the pendency of the suit, and in the form prescribed by the act to reduce the expenses of foreclosing mortgages in the court of chancery, has been filed with such clerk for at least forty days previous to such hearing, or motion for a decree.

RULE 136.

Any person claiming the surplus moneys arising upon a master's sale of mortgaged premises, or any part of such surplus moneys, may, either in his own name or by his solicitor, give to the master, at any time before the filing of his report of sale, a written notice of such claim, stating therein the nature and extent of his claim, and the place of residence of himself or of his solicitor; and the master shall annex to and file with his report of the sale all notices so received by him; or a notice of such claim upon the surplus moneys may be filed by the claimant with the register, assistant register or clerk where the report is filed, and the surplus moneys are paid by the master.—On the coming in and confirmation of the report of the sale, any party to the suit, or any person not a party who had a lien on the mortgaged premises at the time of the master's sale, either by judgment or decree, upon filing with the register, assistant register or clerk where such surplus moneys are deposited, a notice stating that he is entitled to such surplus moneys or some part thereof, and the nature and extent of his claim, may have an order of course referring it to a master to ascertain and report the amount

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due to him or to any other person which is a lien upon such surplus moneys, and to ascertain the priorities of the several liens thereon; to the end that, on the coming in and confirmation of the report on such reference, such farther order or decree may be made for the distribution of such surplus moneys as may be just. Every party who appeared in the cause, and every person who shall have delivered such written notice of his claim to the master who made the sale, or who shall have filed such notice with the register, assistant register or clerk where the surplus moneys are deposited, previous to the entry of the order of reference, shall be entitled to service of a summons to attend the master on such reference, and to the usual notices of subsequent proceedings relative to such surplus; but if such claimant has not appeared or made his claim by a solicitor of this court, the summons or notice may be served by putting the same into the post-office, directed to the claimant, at his place of residence, as stated in the notice of his claim. Any person making a claim to such surplus moneys, and who shall fail to establish his claim on the reference before the master, may be charged with such costs as the other parties have been subjected to by reason of such claim; and the parties succeeding on such reference may be allowed such costs as the court may deem reasonable; but no costs unnecessarily incurred on such reference, or previous thereto, by any of the parties, shall be allowed on taxation, or paid out of such surplus.

It is farther ordered that the 14th rule of this court be amended by adding to the same the following clause: "and in all cases where the solicitors for the adverse parties do not reside in the same city or town, service of papers may be made by putting them into the post office at the place where the solicitor who is to make the service resides, properly enclosed and directed to the solicitor of the adverse party at the place of residence of such solicitor and paying the postage thereon; which service shall be equivalent to service upon an agent."

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Form of a bill of foreclosure devised by the Chancellor, as directed by the act of the fourteenth of May, 1840, to reduce the expense of foreclosing mortgages in the Court of Chancery :

IN CHANCERY:—To the Chancellor of the State of New-York.

Your orators, John Den of the city of New York, and Peter Fen of the township of Jamaica, in the county of Queens; complaining, show unto this Court, [*or upon their information and belief show, &c.*] that on the first day of June, one thousand eight hundred and thirty, Peter Prince, of the city of Utica, in the county of Oneida, executed under his hand and seal, and delivered to your orators, a bond bearing date on that day, in the penal sum of one thousand dollars, with a condition thereunder written, in substance, that if the obligor in the said bond, his executors or administrators, should pay or cause to be paid to your orators, the obligees in the said bond named, their executors, administrators or assigns, the sum of five hundred dollars in one year from the date of the said bond, with interest thereon, then the said bond to be void, otherwise to be and remain in full force; as by the said bond, ready to be produced by your orators as this Court shall direct, will more fully appear. And the said Peter Prince and Anna Prince his wife, to secure the payment of the principal and interest mentioned in the condition of the said bond, did at the same time execute under their hands and seals and deliver to your orators, a mortgage bearing the same date with the said bond, and conditioned for the payment of the said sum of five hundred dollars and interest thereon, in one year from the date of the said bond and mortgage, according to the condition of the said bond: by which said mortgage the said Peter Prince and Anna Prince his wife mortgaged unto your orators, in fee, certain lands and real estate which is now situate in the first ward of the city of Troy, in the county of Rensselaer, and in the town of Milton, in the county of Saratoga, and in the village of Catskill, in the county of Greene, which mortgaged premises were described in the said mortgage as follows: "All

THE COURT OF CHANCERY.

those certain pieces or parcels of land, &c" [or which mortgaged premises were described in the said mortgage, as in the schedule hereunto annexed, marked A.] which mortgage was duly acknowledged, [or proved,] so as to entitle it to be recorded, and the same was afterward duly recorded, as a mortgage, in the offices of the clerks of the counties of Rensselaer, Saratoga and Greene, on the tenth day of June, one thousand eight hundred and thirty, at five minutes after ten o'clock in the forenoon, as by the said mortgage, and the certificates of proof, or acknowledgment, and of the recording aforesaid endorsed thereon, and now ready to be produced as this Court shall direct, will more fully appear. And your orators believe, and therefore farther state, that the sum of four hundred dollars, part of the amount secured by the said bond and mortgage, together with the interest on that sum from the first day of June, one thousand eight hundred and thirty-six, still remains due and unpaid to your orators, and that no proceedings at law have been had to recover the debt secured by the said bond and mortgage, or any part thereof; [or if a suit at law has been commenced, state the situation of such suit; and if a judgment has been recovered therein, show that the execution has been returned unsatisfied, as directed by the statute.]

And your orators believe, and therefore farther state, that Aaron Peters, of the town of Phelps, in the county of Ontario, and John A. Noakes, whose place of residence is unknown to your orators, have or claim some interest in the said mortgaged premises, or in some part thereof, as purchasers, mortgagees or otherwise, which interests, if any, have accrued subsequent to the lien of the mortgage of your orators, and are subject thereto; [if there are any prior mortgagees made parties to the suit, set out their rights briefly and truly, so far as the same can be ascertained.] Your orators therefore pray the aid of this court in the premises, and that the above named Peter Prince and Anna Prince, his wife, [naming all who are intended to be made parties,] the defendants in this suit, may appear before the Chancellor [or before the Vice Chancellor of the second circuit,] in the Court of Chancery and answer this your orators' bill according to the rules and practice of the said Court, upon their respective oaths, [or without oath, their answers on oath being hereby waived,] and

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that the usual decree may be made for the sale of the mortgaged premises aforesaid, and for the payment of the amount due to your orators for principal and interest upon the said bond and mortgage, together with their costs in this suit, and that the said defendants, and all persons claiming under them subsequent to the commencement of this suit, and all other persons although not parties to this suit, who have any liens by judgment or decree upon the mortgaged premises subsequent to the said mortgage of your orators, or any liens or claims thereon by or under any such subsequent judgment or decree, either as purchasers, incumbrancers or otherwise, may be barred and foreclosed of all equity of redemption in the said premises, and that your orators may have such farther or such other relief as the nature of the case may require, and as to this Court may seem proper and agreeable to equity.

J. P. Hall, Solicitor for Complainant.

David Graham, of Counsel.

NOTE.—If the answer on oath is not waived by the complainants, the facts which are not known to them personally must be stated upon their information and belief merely, and the bill verified by oath as directed by the seventeenth rule of the Court. The solicitor is to be at liberty to vary the form of the bill as the circumstances of the case and the protection of the rights of his clients may appear to him to require, without making his bill unnecessarily prolix; but inserting every thing therein which is necessary to make such bill good in substance.

New York, June 3d, 1840.

B. HYDE WALWORTH, *Chancellor*.

THE COURT OF CHANCERY.

Notice of lis pendens, in a suit for the foreclosure of a mortgage; to be filed in the office of the County Clerk.

IN CHANCERY.

John Den, & Peter Fen,
Complainants,

vs.

Peter Prince & Anna, his wife,
Aaron Peters & John A. Noakes,
Defendants.

Notice is hereby given, that a suit has been commenced in the Court of Chancery, of the state of New York, upon a bill filed before the Chancellor, [or before the Vice Chancellor of the first circuit,] by the above named complainants, against the above named defendants, for the purpose of obtaining the foreclosure of a mortgage, bearing date on the first day of July, 1830, executed by Peter Prince, of the city of Utica, and Anna his wife, to John Den and Peter Fen, and recorded in the office of the register, of the city and county of New York, [or in the office of the clerk of the county of Greene,] on the first day of July, 1830, at five minutes after ten o'clock, in the forenoon; and that the mortgaged premises to be affected by the said foreclosure suit are, at the date of this notice, situated in the first ward of the city of New York, in the county of New York [or "in the village of Catskill, in the county of Greene," or if the lands are neither in a city or an incorporated village, "in the town of," &c.] and are described in the said mortgage as follows, to wit: "All that certain piece or parcel of land, &c." (take in description as in the mortgage.)

Wm. Kent, Solr. for Compl'ts.

New York, June 3d, 1840.

John Lawrence
Correll
Myra
Maudie

July 27







100

100

100

100

